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PARKING INFRACTIONS

AN INSTRUCTIONAL MANUAL FOR PART II OF THE PROVINCIAL OFFENCES ACT

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Ontario

Ministry of the Attorney General

Ministère du Procureur général

Provincial Offences Act Implementation

Mise en application de la loi sur les infractions provinciales

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FOREWORD

The coming into force of Part II of the Provincial Offences Act represents the last stage in the process of creating a simplified and convenient set of legal procedures for the prosecution of all offences against the laws of Ontario, including those under provincial regulations and municipal by-laws. Although parking infractions constitute the most common, and usually the least significant, type of offence in modern society, the legal procedures which until now have governed their prosecution were derived from legal principles which had ceased to be appropriate to the minor nature of such proceedings. With the implementation of Part II of the Provincial Offences Act, the previous slow and cumbersome procedures will be replaced by new provisions which will reduce costs and delays in the courts without infringing upon every person's right to have a trial if that is his or her wish.

This manual is intended to serve as a convenient reference tool for persons who are involved in the enforcement and prosecution of parking infractions. Its content represents a joint effort by many persons from various backgrounds and public agencies who have contributed to a fuller understanding of the many aspects of law, administration, and technology which are involved in the apparently mundane world of parking control and enforcement. Those who have contributed the largest efforts to its preparation are David Beck, former Project Coordinator, who is now with the Regional Municipality of Hamilton-Wentworth and Richard Gayne, Counsel in the Office of the Director of Crown Attorneys; our labours have been assisted at various points in the past twelve months by the practical experience and advice of Robert Gleason, Senior Planning Officer in the Provincial Court Services Branch. Finally, we wish to express our appreciation to Sandra Popit, who patiently and carefully supervised the typing and production of this manual.

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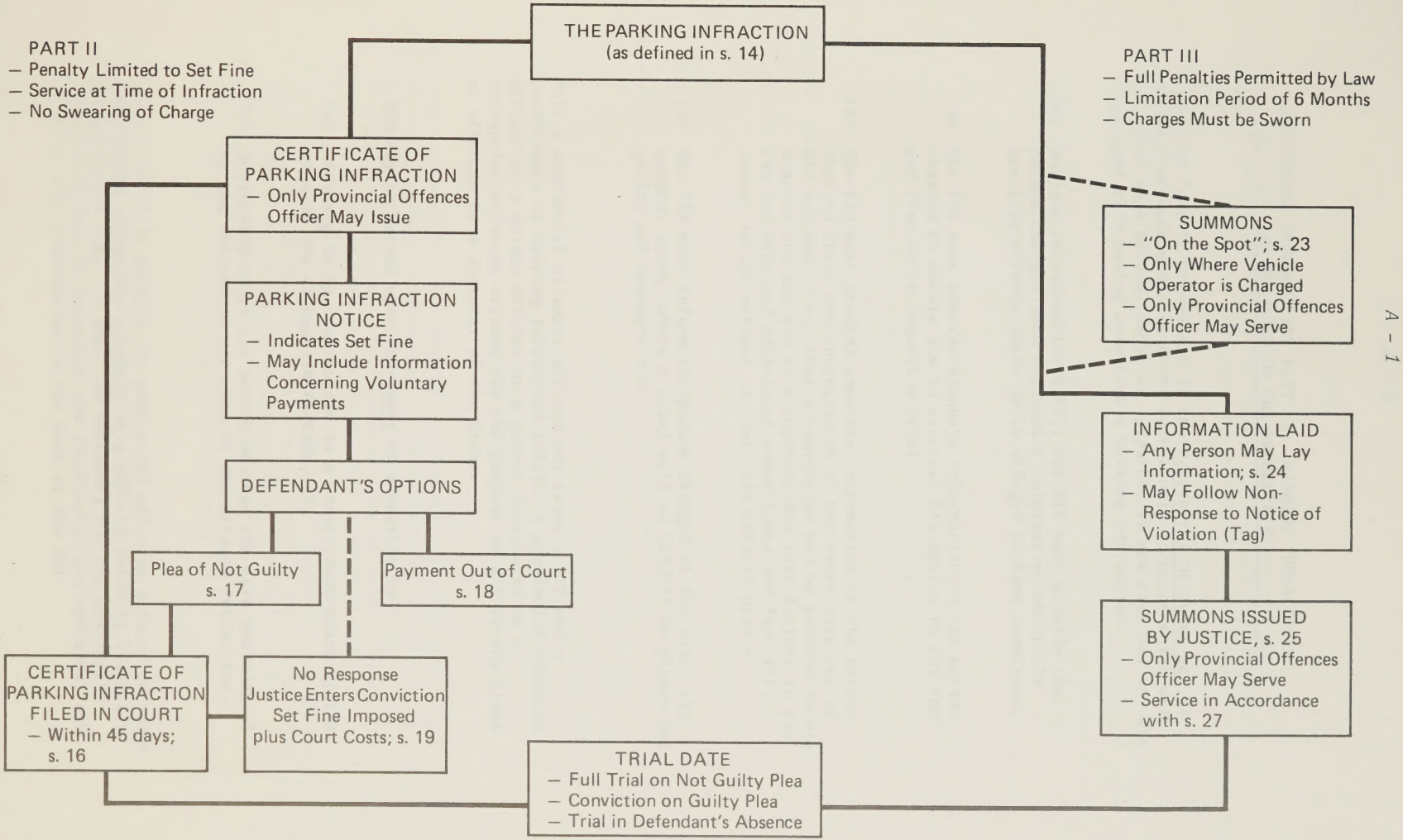
TABLE OF CONTENTS

AN OVERVIEW OF PART II OF THE PROVINCIAL OFFENCES ACT

COMMENCING PROCEEDINGS

IN RESPECT OF PARKING INFRACTIONS UNDER THE PROVINCIAL OFFENCES ACT



PROVINCIAL OFFENCES ACT PART II: PARKING INFRACTIONS
AN OVERVIEW OF THE PROCEDURES

1. Under the Part II procedures of the Provincial Offences Act, a Parking Infraction Notice (PIN) is the only document which will be issued to a person (owner or operator, as the case may be) who is charged with having committed a parking infraction.

   (a) Subject to subsection 17(3), the PIN must provide the person charged with reasonable information about the specific offence which he is alleged to have committed.

   (b) The PIN must provide adequate information to the person charged to enable him to exercise his option to pay the set fine or to request a trial.

   (c) The PIN must provide adequate information to the person charged about the consequences of not exercising one of his options, i.e., that a conviction may be entered in his absence and the set fine imposed, and that failure to pay the set fine and additional court costs and fees will result in the refusal to renew his vehicle permit.

   (d) The PIN must inform the person charged of the place (in general terms) where a trial will be held if he pleads not guilty and requests one.

2. Only a provincial offences officer may issue a PIN and a Certificate of Parking Infraction (CPI). A provincial offences officer is a police officer or a person designated as a provincial offences officer for the purpose of all or any class of offences by a minister of the Crown.

3. A PIN may be served upon the owner of a vehicle by

   (a) affixing it to the vehicle in a conspicuous place at the time of the alleged infraction, or,

   (b) delivering it to the person who has the care and control of the vehicle at the time of the alleged infraction.

4. Subsection 16(4) permits the provincial offences officer to serve and thereby charge the operator of a vehicle which is illegally parked with a PIN. It would be necessary for the provincial offences officer to determine the identity of the operator, and to write this information on the back of the CPI.

5. A person who has been served with a PIN may pay the set fine shown on its face by delivering the PIN and payment to the place specified in the notice; section 18.

   (a) For parking infractions under municipal by-laws, the place for payment will be an office of the municipality, or perhaps a bank or drop-box.

   (b) For parking infractions under provincial statutes and regulations, the place for payment will be the local office of the Provincial Offences Court.

6. A person who has been served with a PIN may plead not guilty by signing the "not guilty" plea on it, indicating his desire to appear or be represented at a trial, and delivering the PIN to the place specified on it.

   (a) For parking infractions under municipal by-laws, the place to which requests for trial will be delivered will be an office of the municipality or of the police force which issued the PIN.

   (b) For parking infractions under provincial statutes and regulations, the place to which trial requests will be delivered will be the local office of the Provincial Offences Court.

7. The provincial offences officer who has issued a PIN must also complete and sign a Certificate of Parking Infraction (CPI) certifying that a parking infraction has been committed.

   (a) The CPI and PIN must be sufficient to meet the standards for describing an offence which are set out in section 26 of the Provincial Offences Act. In essence, the description must provide the person charged with reasonable information about the prohibited act which he is alleged to have committed. In some large municipalities with a number of parking by-laws, it may not be possible for the issuing officer to ascertain the specific by-law at the time when he perceives the infraction. Subsection 16(2a) permits a CPI to be issued without a reference on it to the specific by-law which creates the offence being included on the CPI or PIN.

8. Where the municipality wishes to file the CPI, it will request proof of ownership for the vehicle which was illegally parked from the Ministry of Transportation and Communications.

9. When the requested ownership information is received, the municipality should check the vehicle description provided by MTC against the vehicle description on the CPI, if any, in order to determine whether a wrong plate number might have been written on the CPI by the issuing provincial offences officer. If the two descriptions of the vehicle do not match, the prosecutor may decide not to file the CPI in respect of that offence, or he may again request proof of ownership. If the number plate recorded on the CPI had been recently transferred from one vehicle to another by the holder of the permit issued for that plate number, a second request for ownership information may produce evidence that the plate was in fact attached to the vehicle which was described in the CPI. In any case, the vehicle description is not an essential element of the charge.

10. Where at least 15 days have elapsed after the person was served with a PIN, and neither payment nor a request for trial has been received, the prosecutor may decide to file the CPI in the local office of the Provincial Offences Court.

11. Where a person who was served with a PIN requests a trial, the prosecutor will file the CPI, with the required MTC documentation, in the local office of the Provincial Offences Court.

12. If the CPI is to be filed with the court, the prosecutor will then affix the CPI's to a "court filing document" and file it in the court office if a trial has been requested, or there has been no response by the person charged, together with proof of ownership for each vehicle which is alleged to have been parked illegally.

13. Subsection 16(1) allows the CPI to be filed within 45 days after the alleged offence occurred. The municipality will ordinarily wait 15 days to see whether payment or a request for trial is received, before requesting ownership information from MTC. There is no extension of the 45 day limit. If, for any reason, it is not possible to file the CPI and proof of ownership within 45 days, the prosecutor could use the data recorded on the CPI to prepare an information and lay it before a justice under Part III of the Act. A summons would then have to be served upon the person charged and a trial would be conducted, whether or not the defendant appeared in response to the summons.

14. Where a CPI has been filed in the court office, with a signed PIN requesting a trial, proof of ownership and a subsection 16(1a) certificate from the clerk of the municipality or his designate to the effect that payment was not received under section 18 and that a not guilty plea was not received, the court will send notice of the time and place of trial to both the prosecutor and the person charged [subsection 17(2)]. The particular trial date selected by the court staff would be in accordance with pre-established schedules for each officer's court dates, if any. The reference to by-law will be noted on notice of trial in accordance with subsection 17(4) of the Act.

15. The municipality will need to file a certificate stating that a request for a trial has not been received and that payment has not been made under section 18. Subsection 19(1a) empowers the clerk of a municipality, or a person designated by him, to certify that these events have not occurred. Attaching this certificate to a copy of the certificate control list will probably be the most convenient way of furnishing this information to the court.

16. Where the person charged has not requested a trial, he will be deemed to not wish to dispute the charge, and a justice will examine the CPI filed in accordance with subsection 19(1).

17. Where the justice is satisfied that the CPI is complete and regular on its face, and, where the defendant is liable as owner, that the defendant is the owner of the vehicle, and that no payment has been made under section 18, the justice will enter a conviction in the defendant's absence without a hearing and impose the set fine for the offence.

18. Where the justice is not able to enter a conviction pursuant to subsection 19(1), he must quash the proceeding; subsection 19(2).

19. Where a conviction has been entered pursuant to subsection 19(1) the clerk of the Provincial Offences Court will give notice of the conviction and the amount of the fine to the defendant. The notice will also inform the defendant of the consequences of failure to pay the fine.

20. Where the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied by affidavit in the prescribed form of such facts, shall strike out the conviction, if any, and give the person appearing a notice of trial under subsection 17(2) or accept a plea of guilty under section 18.

21. Where the fine goes into default, a justice is required to make an order under subsection 70(2) of the Act that the permit of the person who is in default not be validated, and that no new permit be issued to him until the fine is paid; section 7(3c) of the Highway Traffic Act. Subsection 70a of the Provincial Offences Act authorizes the imposition of an administrative fee in the amount of $10.00 for late payment after a fine has gone into default.

PROVINCIAL OFFENCES ACT

PART II

COMMENCEMENT OF PROCEEDINGS FOR PARKING INFRACTIONS

14. In this Part, "parking infraction" means any unlawful parking, standing or stopping of a vehicle that constitutes an offence. R.S.O. 1980, c. 400, s.14.

15. (1) Subject to subsection (2), this Part does not apply in respect of parking infractions under by-laws of municipalities until a date two years after this Part comes into force.

(2) Subject to the approval of the Lieutenant Governor in Council, the council of a municipality may by by-law declare that this Part applies in respect of parking infractions under by-laws in the municipality on a date earlier than the date determined under subsection (1). R.S.O. 1980, 400, s. 15.

16. (1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of a parking infraction may be commenced by filing in the office of the court.

(a) a certificate of parking infraction; and

(b) where the parking infraction is alleged against the defendant as owner of a vehicle, evidence of the ownership of the vehicle,

within forty-five days after the alleged infraction occurred.

(2) A provincial offences officer who believes from his personal knowledge that one or more persons have committed a parking infraction may issue, by completing and signing,

(a) a certificate of parking infraction certifying that a parking infraction has been committed; and

(b) a parking infraction notice indicating the set fine for the infraction,

in the form prescribed under section 21.

(2a) A provincial offences officer may issue a certificate and notice under subsection (2) in respect of a parking infraction under a by-law of a municipality without including on the certificate or notice a reference to the number of the by-law that creates the offence.

(3) The issuing provincial offences officer may serve the parking infraction notice on the owner of the vehicle identified therein by affixing it to the vehicle in a conspicuous place at the time of the alleged infraction, or delivering it personally to the person having care and control of the vehicle at the time of the alleged infraction. R.S.O. 1980, c. 400, s. 16.

(4) The issuing provincial offences officer may serve the parking infraction notice on the operator of a vehicle by delivering it to the operator personally at the time of the alleged parking infraction.

(5) The provincial offences officer who issued the certificate of parking infraction shall certify on the certificate of parking infraction that the officer served the parking infraction notice on the person charged and the date and method of service.

(6) A certificate of service of a parking infraction notice purporting to be signed by the provincial offences officer issuing it shall be received in evidence and is proof of service in the absence of evidence to the contrary.

17. (1) Where a parking infraction notice is served, the defendant may plead not guilty by signing the not guilty plea on the notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver it to the place specified in the notice.

(2) Where a parking infraction notice is received under subsection (1), the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial. R.S.O. 1980, c. 400, s. 17.

(3) Subject to subsection (4), where a certificate of parking infraction is issued for an infraction under a by-law of a municipality, the certificate is not insufficient or irregular by reason only that it does not identify the by-law that creates the offence.

(4) Where the defendant delivers a notice under subsection (1), subsection (3) does not apply unless the notice of the trial given to the defendant under subsection (2) identifies the by-law.

18. Where the defendant does not wish to dispute the charge, he may deliver the notice and amount of the set fine to the place shown on the notice. R.S.O. 1980, c. 400, s. 18.

19. (1) Where at least fifteen days have elapsed after the defendant was served with the parking infraction notice and the parking infraction notice has not been delivered in accordance with subsection 17(1), the defendant shall be deemed to not wish to dispute the charge and a justice shall examine the certificate of parking infraction and where the justice is satisfied,

(a) that the certificate of parking infraction is complete and regular on its face;

(b) where the defendant is liable as owner, that he is the owner; and

(c) that payment has not been made under section 18,

the justice shall enter a conviction in the defendant's absence and without a hearing and impose the set fine for the offence.

(1a) Where a certificate of parking infraction is issued for an infraction under a by-law of a municipality, a certificate purporting to be signed by the clerk of the municipality, or a person designated by the clerk,

(a) that payment has not been made under section 18; and

(b) that notice of the defendant's desire to appear or to be represented at trial has not been delivered to the place specified in the parking infraction notice,

shall be received in evidence and is proof of the facts contained therein in the absence of evidence to the contrary.

(1b) Where a defendant is deemed to not wish to dispute a charge under subsection (1) in respect of a parking infraction under a by-law of a municipality, the justice shall enter a conviction under subsection (1) without proof of the by-law which creates the offence if the justice is satisfied that all other criteria under subsection (1) for entering a conviction have been met.

(2) Where the justice is not able to enter a conviction under subsection (1), he shall quash the proceeding.

(3) The clerk of the court shall give notice to the person against whom a conviction is entered under subsection (1) of the date and place of the infraction, the date of the conviction and the amount of the fine, R.S.O. 1980, c. 400, s. 19.

20. Where the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied by affidavit in the prescribed form of such facts, shall strike out the conviction, if any, and give the person appearing a notice of trial under subsection 17(2) or accept a plea of guilty under section 18. R.S.O. 1980, c. 400, s. 20.

21. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing the form of certificate of parking infractions and parking infraction notices and such other forms as are considered necessary under this Part;

(b) authorizing the use in a form prescribed under clause (a) of any word or expression to designate a parking infraction;

(c) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

(2) The use on a form prescribed under clause (1)(a) of any word or expression authorized by the regulations to designate a parking infraction is sufficient for all purposes to describe the infraction designated by such word or expression.

(3) Where the regulations do not authorize the use of a word or expression to describe a parking infraction in a form prescribed under clause (1)(a), the offence may be described in accordance with section 26. R.S.O. 1980, c. 400, s. 21.

ANNOTATIONS OF

PART II OF THE

PROVINCIAL OFFENCES ACT

(including other sections of the Act
relevant to the prosecution of
parking infractions)

PROVINCIAL OFFENCES ACT

INTERPRETATION

Section 1. Definitions of Key Terms

1.—(1) In this Act,

(*a*) "certificate" means a certificate of offence issued under Part I or a certificate of parking infraction issued under Part II;

(*b*) "court" means a provincial offences court or, where jurisdiction in respect of the offence is conferred upon a provincial court (family division) by any other Act, the provincial court (family division);

(*c*) "offence" means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature;

(*f*) "police officer" means a chief of police or other police officer or constable but does not include a special constable or by-law enforcement officer;

(*h*) "prosecutor" means the Attorney General or, where the Attorney General does not intervene, means the person who issues a certificate or lays an information and includes counsel or agent acting on behalf of either of them;

(*i*) "provincial offences officer" means a police officer or a person designated under subsection (2);

(*j*) "set fine" means the amount of fine set by the court for an offence for the purpose of proceedings commenced under Part I or II.

Idem (1a) In this Act, "municipality" includes a regional, district or metropolitan municipality.

Designation of provincial offences officers (2) A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences. R.S.O. 1980, c. 400, s. 1.

This section contains the definition of the terms frequently used in proceedings under the Act. For the purpose of proceedings under Part II, a certificate is defined as a certificate of parking infraction. The certificate replaces the sworn information which

was the only method of commencing a legal proceeding under the provisions of the Summary Convictions Act. The court is also defined as being the Provincial Offences Court. It is intended that this court be more informal and less technical in procedure than the criminal courts. It is ordinarily presided over by a justice of the peace, who acts under the general direction of a judge of the Provincial Court (Criminal Division). As a rule, provincial judges preside in Provincial Offences Court only when serious cases are being tried.

A set fine is defined and is basically the same as what was formerly known as an "out-of-court" settlement. It is the fine that a defendant may pay by pleading guilty without requesting a trial and attending court. Regulation 809 prescribes the rules of practice and procedure for the Provincial Offences Court. Rule 6 provides that for the purpose of proceedings under Part II of the Act, the amount of fine set by the court for an offence is such amount as may be set by the Chief Judge of the Provincial Offences Court. Since only the Chief Judge has been given this power, by-laws pertaining to parking infractions should not contain any reference to set fines, but must include a general provision establishing a range of penalties which may be imposed upon conviction, regardless of how a proceeding is commenced.

The set fine is a level of fine which is somewhat above the minimum and is designed to be an average amount which would be appropriate for the routine violation and the routine violator. There is no method by which a higher set fine can be imposed for subsequent offences, since the justice who imposes a conviction in the defendant's absence will have no means of being satisfied that the person charged has been convicted previously of a similar offence. If it is desired to seek a higher penalty against a repeat offender, it will be necessary to proceed under Part III of the Act.

Subsection 1(i) defines a new type of appointment and recognizes the category of officers created under subsection 1(2) who are empowered to issue and serve parking infraction notices and certificates of parking infraction.

Only a provincial offences officer can issue a parking infraction notice (PIN) and a certificate of parking infraction (CPI). A provincial offences officer is a police officer or a person designated as a provincial offences officer for the purpose or all of any class of offences by a Minister of the Crown. The Solicitor-General has designated all persons employed by a municipality whose duties include enforcement of by-laws as provincial offences officers for the purpose of all offences under by-laws of the municipality. In addition, the Solicitor-General has agreed to designate all persons who enforce parking by-laws under contract with a municipality as provincial offences officers. The Provincial Offences Act does not give provincial offences officers any power of arrest, search or seizure. Particular statutes such as the Highway Traffic Act and Municipal Act confer such powers on police officers and other law enforcement officers in specific situations, as well as the power to remove a vehicle which has been illegally parked, in certain situations.

Section 2. Purpose and Interpretation

Purpose of Act

R.S.C. 1970, c. C-34

2.—(1) The purpose of this Act is to replace the summary conviction procedure for the prosecution of provincial offences, including the provisions adopted by reference to the *Criminal Code* (Canada), with a new procedure that reflects the distinction between provincial offences and criminal offences.

Interpretation

(2) Where, as an aid to the interpretation of provisions of this Act, recourse is had to the judicial interpretation of and practices under corresponding provisions of the *Criminal Code* (Canada), any variation in wording without change in substance shall not, in itself, be construed to intend a change of meaning. R.S.O. 1980, c. 400, s. 2.

In replacing the summary conviction procedures with the procedures contained in the Provincial Offences Act, it was the intent of the Legislature to simplify, clarify and expedite the procedure for minor offences, including parking infractions. Minor offences are clearly quite different in nature from Criminal Code offences, and the procedures under the Act reflect that distinction.

It is hoped that the Part II procedures will simplify and expedite the progress of legal proceedings arising from parking enforcement, a level of law enforcement encountered by most people at some point in time. This approach should be considered when prosecuting a charge and, while the procedures should not be ignored, they should be applied and interpreted in such a way as not to cause undue delay or technical objections affecting the meritorious outcome of the case.

Subsection 2(2) deals with minor variations in wording between the Provincial Offences Act and the Criminal Code. It clearly states that a minor change in wording should not be read as indicating a change in meaning. Although the Act creates its own code of procedure, most of the provisions are derived from the Criminal Code. There has been substantial modification, however, to reflect the nature of provincial offences and the overall purpose of the Act. Certain provisions of the Criminal Code were followed because they generally were appropriate for provincial offences, and therefore no change in intention should be presumed because of a minor variation in the wording. Any such difference must be carefully examined keeping in mind the object and purpose of the Act; if, in that context, it is clear that the Legislature intended to create a difference in meaning, that intention will be given effect to. Otherwise any difference can be ignored.

PART II

COMMENCEMENT OF PROCEEDINGS FOR PARKING INFRACTIONS

Section 14. Definition of Parking Infraction

Interpretation

14. In this Part, "parking infraction" means any unlawful parking, standing or stopping of a vehicle that constitutes an offence. R.S.O. 1980, c. 400, s. 14.

Parking infractions are generally offences against municipal by-laws and are punishable by small monetary penalties which are payable to the municipality. The owner of the vehicle is liable for the penalty regardless of whether he was the operator of the vehicle at the time of the offence, pursuant to section 321(2) of the Municipal Act.

Reference should be made to section 1 of the Highway Traffic Act, for assistance in determining what is meant by such terms as "vehicle", "parking", and so on. "Park or parking", when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Stand or standing", when prohibited, means the halting of a vehicle, whether occupied or not, except for the purpose of and while actually engaged in receiving or discharging passengers.

"Vehicle" is defined to include a motor vehicle, trailer, traction engine, farm tractor, road-building machine and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or streetcar. Nevertheless, a motorized snow vehicle would probably be regarded as a "vehicle" for the purpose of the Provincial Offences Act.

"Stop or stopping", when prohibited, means the halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a constable or other police officer or of a traffic control or signal.

"Roadway", "intersection", "highway" and even the word "driver" are defined in the section.

Since it is clear that the essence of parking infractions is the act of causing or allowing some kind of vehicle to be left motionless, or to be halted for a period of time, in a place where this activity is prohibited, it is submitted that the Part II procedures were not intended to apply to activities which incidentally involve the leaving of a vehicle in a place or manner which is contrary to a law or by-law, but which, in its basic purpose, has an objective which is different from merely regulating the movement and parking of vehicles. For example, many zoning by-laws contain a prohibition against parking a commercial truck of a certain weight or dimension on private property in a residential zone. The objective of such by-laws is to regulate the use to which land is put in different neighbourhoods, and not primarily to control the parking of vehicles in general. Therefore, it is doubtful whether an offence of that kind would be considered as a true "parking infraction", so that proceedings would have to be commenced under Part I or Part III of the Act, rather than under Part II.

Section 15. Application to Parking Infractions under Municipal By-Laws

Date applicable to infractions under municipal by-laws

15.—(1) Subject to subsection (2), this Part does not apply in respect of parking infractions under by-laws of municipalities until a date two years after this Part comes into force.

Idem

(2) Subject to the approval of the Lieutenant Governor in Council, the council of a municipality may by by-law declare that this Part applies in respect of parking infractions under by-laws in the municipality on a date earlier than the date determined under subsection (1). R.S.O. 1980, c. 400, s.15.

Section 15 basically states that municipalities have two years from the date of proclamation in which to commence to use Part II proceedings. This allows for some transition time between the use of the Summary Convictions Act, which will be completely repealed as of August 31, 1989, and Part II of the Act. The two-year period allows municipalities to change their administrative systems to accommodate the new procedures at a time which is convenient for them.

At the end of the two year period, Part II will apply to all municipal parking infractions. Prior to the expiration of the two year period, a municipality may, by passing the necessary by-law under subsection 15(2) opt to use the Part II procedures. This is how the pilot group of municipalities will commence utilization of the new procedures in the fall of 1987.

Section 16. Issuing a Certificate of Parking Infraction and Serving a Parking Infraction Notice

Commencement of proceeding

16. (1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of a parking infraction may be commenced by filing in the office of the court,

(a) a certificate of parking infraction; and

(b) where the parking infraction is alleged against the defendant as owner of a vehicle, evidence of the ownership of the vehicle,

within forty-five days after the alleged infraction occurred.

Issuance and notice

(2) A provincial offences officer who believes from his personal knowledge that one or more persons have committed a parking infraction may issue, by completing and signing,

(*a*) a certificate of parking infraction certifying that a parking infraction has been committed; and

(*b*) a parking infraction notice indicating the set fine for the infraction,

in the form prescribed under section 21.

Municipal by-laws

(2a) A provincial offences officer may issue a certificate and notice under subsection (2) in respect of a parking infraction under a by-law of a municipality without including on the certificate or notice a reference to the number of the by-law that creates the offence.

Service of notice on owner

(3) The issuing provincial offences officer may serve the parking infraction notice on the owner of the vehicle identified therein by affixing it to the vehicle in a conspicuous place at the time of the alleged infraction, or delivering it personally to the person having care and control of the vehicle at the time of the alleged infraction. R.S.O. 1980, c. 400, s. 16.

Service of notice on operator

(4) The issuing provincial offences officer may serve the parking infraction notice on the operator of a vehicle by delivering it to the operator personally at the time of the alleged parking infraction.

Certificate of service

(5) The provincial offences officer who issued the certificate of parking infraction shall certify on the certificate of parking infraction that the officer served the parking infraction notice on the person charged and the date and method of service.

Certificate as evidence

(6) A certificate of service of a parking infraction notice purporting to be signed by the provincial offences officer issuing it shall be received in evidence and is proof of service in the absence of evidence to the contrary.

Subsection 16(1) sets out the requirements for commencing a proceeding under Part II of the Act. The proceeding may be commenced by filing a certificate of parking infraction (CPI) in the office of the Provincial Offences Court which has territorial jurisdiction over the place where the alleged offence occurred. See the comments under section 30 concerning the territorial jurisdiction of a particular Provincial Offences Court.

Ordinarily it is the owner of a vehicle alleged to have been illegally parked who is charged with having committed a parking infraction, although the Highway Traffic Act, the Motorized Snow Vehicles Act and the Municipal Act also allow for the charging of the person who has actually caused the vehicle to be parked illegally. Where the charge is laid against the owner, evidence of the ownership of the vehicle must be filed with the certificate of parking infraction in which it is alleged that a specific vehicle was illegally parked. It is expected that a rule of the Provincial Offences Court will require that the evidence of ownership must accompany the certificate of parking infraction at the time the latter document is filed in court. It is proposed that both the CPI and the evidence of ownership will be affixed to a form referred to as a "court filing document" when they are filed in the court office.

A proceeding under Part II of the Act must be commenced within 45 days after the alleged infraction occurs. This is an absolute limitation period which cannot be extended by the court; refer to section 85 of the Act. The 45-day period is intended to allow the defendant 15 days to decide whether to pay the set fine or to ask for a trial, and then to permit the police or other

parking control agency sufficient time to obtain evidence of ownership from the Ministry of Transportation and Communications, before the CPI must be filed in court.

It should be noted that there is an alternative method of commencing a proceeding in respect of an alleged parking infraction. If for any reason it is not practical or possible to commence a proceeding under Part II, any person may commence a proceeding under Part III of the Provincial Offences Act by laying an information; see the discussion under section 24 below. An example of where proceedings would be commenced under Part III might be where a CPI has been issued, but evidence of ownership was not received before the 45th day after the alleged infraction occurred, perhaps because of administrative errors or computer difficulties. If the person charged has requested a trial, or has not responded to the parking infraction notice, the parking control agency would not be able to file the CPI and evidence of vehicle ownership in time. It could, however, proceed to have an information laid under Part III of the Act, alleging the commission of the same offence described on the CPI, which would simply be retained by the agency for its records. If the justice who receives the sworn information considers that a case for doing so has been made out by the informant's allegations, he or she will issue a summons to the defendant for the trial of the alleged offence at a future date.

Subsection 16(2) of the Act empowers a provincial offences officer to issue both a CPI and a PIN when he or she believes that one or more persons have committed a parking infraction. The provincial offences officer must form this belief from personal knowledge; it is not sufficient that the officer believes a parking infraction has been committed on the basis of information provided by some other person, which by comparison is permitted as a standard of belief for commencing proceedings under Part I of the Act. The requirement that the issuing officer must have personal knowledge reflects the fact that the circumstances of most parking infractions are not so unique that the pertinent facts would stand

out in the recollection of either the enforcement officer or the person charged. For example, if one parking control officer were to inform another officer that three particular vehicles had been parked longer than $3\frac{1}{2}$ hours on a side street, and also to instruct the second officer to complete three CPI's, the second officer would probably have no real impression of the relevant facts. By comparison, one police officer could complete a report concerning a motor vehicle accident and provide it to his or her superior officer, who on that basis would be able to form the belief that the offence of careless driving had taken place. If the first officer had gone away on another assignment, the superior officer could properly complete a certificate of offence under Part I of the Act, alleging that the person charged had committed that offence.

The form of both the CPI and PIN have been prescribed by a regulation made under section 21 of the Act. The provincial offences officer who completes and signs the CPI will certify that he or she believes that a particular parking infraction has been committed. The certification by the officer under Part II replaces the laying of a sworn information before a justice of the peace as in the procedures under Part III of the Act. This simple, straightforward method of issuing the document which is eventually filed in the court office is appropriate to the relatively minor nature of the offence. An important safeguard on the possible frivolous laying of charges by this method is provided by the fact that only certain categories of law enforcement personnel have been designated as provincial offences officers. See the discussion of the term "provincial offences officer" under section 1, above.

The officer who issues a CPI will also complete and sign a document known as the parking infraction notice (PIN) which is served upon the person charged. The PIN sets out a description of the alleged infraction and indicates the specific set fine which is payable if the defendant decides that he or she does not wish to dispute the charge. The regulation allows a number of parking infractions to be listed on one CPI or PIN, and permits the issuing officer to indicate the specific infraction by making an "x" or in some other manner.

In some large municipalities there are several by-laws regulating the parking of vehicles in various situations or at different locations. It may be virtually impossible for the provincial offences officer to determine the precise number of the relevant by-law at the time when the CPI and the PIN are completed, although the presence of authorized signs will allow the officer to determine that an infraction has been committed. Subsection 16(2a) allows the officer to issue a CPI and PIN without including a reference to the number of the specific by-law that creates the offence. Without this provision, it could be argued that the CPI does not identify an offence known to the law, and therefore that it had not been properly "completed" at the time the officer filled out the pertinent details and signed it. If that very technical argument were to be accepted, the court which dealt with the CPI at a trial might conclude that it had no jurisdiction to amend the charge by inserting the pertinent by-law number, if the prosecutor requested such an amendment to be made. Subsection 16(2a) cures this potential problem.

Subsection 16(3) sets out the two methods for serving the PIN on the owner of the vehicle which is alleged to have been parked illegally. Only the provincial offences officer who has issued the PIN may serve it. The most common method of effecting service on the owner will be to affix the PIN to the vehicle in a conspicuous place at the time of the alleged infraction, such as placing it under a windshield wiper, which is the common practice currently used for bringing municipal parking "tags" to the attention of vehicle owners. Alternatively, the officer may serve the PIN on the owner by delivering it to the person who has care and control of the vehicle at the time of the alleged infraction. It is not necessary for the officer who serves a PIN in this manner to obtain the name of the person who has care and control of the vehicle, since that is not the person who is being charged with having committed the offence.

In allowing service to be made upon the vehicle owner by placing the PIN on the vehicle, Part II of the Provincial Offences Act dispenses with the previous requirement that a summons must be served on the owner, either by mail or personally, before a trial is held, which is necessary under the provisions of the Summary Convictions Act. It is felt that this manner of service is reasonable in light of the relatively minor nature of parking infractions, and the fact that it can ordinarily be presumed that the PIN will come to the attention of the vehicle owner when he or she returns to the vehicle. In cases where the owner does not receive the PIN, such as where it is blown off the windshield by a gust of wind, or where the driver of the vehicle disposes of the PIN without bringing it to the owner's attention, section 20 allows for a simple reopening procedure which is explained below.

It is possible that a defendant will argue that Part II of the Act, by dispensing with the requirement that the owner be personally served, infringes the right of every person charged with an offence to be informed without unreasonable delay of the specific offence, as guaranteed by clause 11(a) of the Charter of Rights and Freedoms. If this method of service were considered to be an infringement of this right, it is quite probable that the courts would nevertheless uphold this provision as being a reasonable limit prescribed by law which could be demonstrably justified in a free and democratic society, pursuant to section 1 of the Charter. The volume and minor nature of parking infractions, the modest nature of the penalties involved, the considerable expense associated with personal service, and the availability of the convenient reopening procedure, are all factors which could be advanced to establish the reasonable nature of this alleged infringement of the right to be informed of the specific offence with which one is charged without unreasonable delay.

Subsection 16(4) provides a method of serving the PIN on the operator of an illegally parked vehicle in cases where the operator, rather than the owner, is being charged with a parking infraction. It is quite infrequent that a parking control officer wishes to charge the vehicle operator; one example might be where the vehicle

has no number plate affixed to it, so that there is no effective way of determining who is the owner. Where the issuing officer wishes to charge an operator, the PIN must be served personally upon the operator at the time of the alleged infraction.

It should be noted that all three methods of service described above must be carried out "at the time of the alleged infraction". Therefore, if a person returns to his or her vehicle while the officer is filling out the CPI and PIN, and decides to drive away before the officer can serve the PIN by one of these methods, then the officer will be obliged to commence a proceeding under Part III of the Act. The officer can use the information recorded on the CPI to prepare an information, which may be laid before a justice pursuant to the provisions of section 24. The CPI cannot be filed in court because there has been no service of the PIN in a manner authorized by subsection 16(4), and therefore the officer cannot sign the certification statement which appears on the CPI. The penalty for making a false statement in proceedings under the Act is a fine not exceeding $1000; see the discussion under section 86, below.

Subsection 16(5) provides for a simplified method of furnishing proof of service, by allowing the issuing officer to certify on the CPI that a PIN was served upon the person charged on a certain date in one of the three methods authorized under Part II. The CPI has been designed in such a way that with one signature the officer will be able to certify both that he believes that a parking infraction has been committed, and also that he or she has served a PIN in one of the three manners described above. The certification statement may also be adapted to suit the needs of a particular municipality, e.g., if it is quite uncommon to charge a vehicle operator with a parking infraction, any reference to "operator" may be removed from the pre-printed statement on the CPI -- if an operator is charged on some occasion, the issuing officer will have to cross out the word "owner" and insert the word "operator" where appropriate.

Subsection 16(6) states that the certificate of service on the CPI shall be received in evidence and constitutes proof of service, unless the defendant presents evidence to the contrary. A justice of the peace has no jurisdiction to deal with the infraction alleged on a CPI until he or she is satisfied that the PIN has been served upon the person charged in a manner authorized by law. In the absence of this provision, a justice would be required to have oral evidence presented by the officer concerning the details of how the PIN was served.

Section 17. Pleading Not Guilty and Requesting a Trial

17.—(1) Where a parking infraction notice is served, the defendant may plead not guilty by signing the not guilty plea on the notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver it to the place specified in the notice. Dispute with trial

(2) Where a parking infraction notice is received under subsection (1), the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial. R.S.O. 1980, c. 400, s. 17. Notice of trial

Certificate not invalid without by-law number

(3) Subject to subsection (4), where a certificate of parking infraction is issued for an infraction under a by-law of a municipality, the certificate is not insufficient or irregular by reason only that it does not identify the by-law that creates the offence.

Exception

(4) Where the defendant delivers a notice under subsection (1), subsection (3) does not apply unless the notice of trial given to the defendant under subsection (2) identifies the by-law.

Subsection 17(1) sets forth one of the options which a defendant has in responding to a PIN which has been issued and served under Part II. If the defendant feels that there is a valid defence to the charge, he or she may plead not guilty by signing in the place provided on the back of the PIN and indicating a desire to appear or be represented at a trial. The defendant must then deliver the PIN to the place specified upon it. For parking infractions under municipal by-laws, the place of delivery will be

an office or agency of the municipality or its police force. For parking infractions under provincial statutes and regulations, the place of delivery will be the office of the Provincial Offences Court in the territorial jurisdiction where the infraction is alleged to have been committed.

It was decided to allow for pleas of not guilty in respect of municipal parking charges to be delivered to the municipality for the following reasons:

1) if the defendant chooses to provide his proposed defence in person or in writing to the municipal parking control agency, i.e., broken meter, medical emergency, etc., the agency may consider the explanation and decide not to proceed to commence a proceeding, thereby saving both the defendant and the municipality the inconvenience of a trial solely for the purpose of presenting what appears to be a reasonable excuse for committing the alleged violation;

2) if the PIN is delivered to the municipality, it will be known very quickly which charges will proceed either to a trial or to fail-to-respond proceedings, so that evidence of ownership may be requested from the Ministry of Transportation and Communications as soon as possible;

3) if pleas of not guilty to municipal charges were delivered first to the court, the court would then have to notify the municipality of all such requests, and later would have to match up the CPI's, after they were filed, with the PIN's which had already been delivered to the court; clearly, the most efficient method of handling the relatively large volume of not guilty pleas to parking infractions under municipal by-laws is to have the PIN's delivered directly to the municipality, so that they may be filed together with the corresponding CPI and evidence of ownership for the vehicle alleged to have been parked illegally.

Under the provisions of section 87 of the Act, the PIN may be delivered either personally or by mail. Also, since section 83 allows a defendant to act by counsel or agent, the person who is charged and who is served with the PIN may send another person to deliver the PIN to the municipal or court office on his or her behalf; e.g., an employee of a car rental company may deliver all PIN's to the municipality on behalf of the company; a son or

daughter who has committed a parking infraction may deliver the PIN to the municipality on behalf of the registered owner of the vehicle, his father or mother.

Subsection 17(2) sets out the responsibility of the clerk of the Provincial Offences Court after the PIN is received at the court office. For infractions under municipal by-laws this will occur after the municipal agency or police force has filed all the CPI's in court together with the PIN's on which the various defendants have signed a plea of not guilty and indicated that they wish to appear at a trial. The clerk will then give notice of the time and place of trial to the defendant and the prosecutor, in accordance with the court's schedule for hearing trials of parking violations from the various municipalities within its territorial jurisdiction. The notice of trial is in a form prescribed by Regulation 817. (See Appendix "B".)

Depending upon the availability of the individual officer who issued the CPI, it is expected that trials will be scheduled between 15 and 45 days of the date when the CPI and the request for trial are received in the court office. The holding of trials for minor offences such as parking infractions as soon as reasonably possible after the offence was committed will be a significant improvement over the existing procedures under the Summary Convictions Act, where trials for parking offences are often held six months to a year after the offence originally occurred.

It is important to note that the clerk of the court is required to give notice of the time and place of trial only to the "defendant". The defendant is the person whom the officer has alleged committed the specific parking infraction described on the CPI. Where the charge is against the owner of the vehicle -- the usual case -- evidence of ownership will identify the person who is the owner and will accompany the CPI at the time it is received in the court office. Accordingly, the clerk of the court must send a notice of trial in the prescribed form to the registered owner, since that is the only person who is liable to conviction of the alleged

infraction. It is only the registered owner who will be required to pay any fine that the court may impose, and the registered owner is the only person whose vehicle permit privileges will be denied if the fine goes into default. See the discussion under section 70, below, concerning methods of enforcing fine payment.

If the driver of the illegally parked vehicle chooses to sign the not guilty plea on the owner's behalf, and delivers the PIN to the place specified on the notice, it will be assumed that he or she is simply acting as agent for the owner, who is the only person who will be charged. In such situations, it is the practice of the court office to also give notice of the trial to the individual who has signed the not guilty plea and delivered it to the municipal or court office. In this way, both the owner and the person who parked the vehicle improperly will be aware of the date of trial. They will be able to arrange between themselves such matters as who will attend in court, who will present evidence in defence to the charge, and ultimately who will pay the fine if a conviction is entered.

Subsection 17(3) is complementary to subsection 16(2a). It provides that a CPI is not insufficient or irregular only because it does not identify the specific by-law which creates the offence alleged in the CPI. In the absence of such a provision, it is possible that a court which was following a very strict interpretation of traditional legal principles would conclude that a CPI completed without a by-law number was null and void, so that the court would have no jurisdiction to hold a trial of the alleged infraction.

It is quite reasonable not to insist upon identification of the specific by-law in cases where the defendant has not exercised the right to have a trial. However, where the defendant has done so, considerations of fairness and administrative efficiency make it essential to provide the defendant with this information prior to the trial being held. Accordingly, subsection 17(4) states that the "saving" provision in subsection 17(3) does not apply in such

situations, unless the notice of trial identifies the specific by-law which creates the alleged infraction. In order to achieve this, the municipality will be obliged to add a reference to the pertinent by-law at the time the CPI is filed in court, possibly by using a rubber stamp or by typing a short statement on the court filing document, such as: "The parking infraction described on the certificate of parking infraction affixed below is contrary to section 14 of By-law No. 87-122 of the Corporation of the Town of Melonville".

It is not essential on the CPI to refer to the exact section number of the by-law which creates an offence, although, if this information can be conveniently provided on the preprinted forms, then the defendant will have all the information he or she needs in order to look up the offence-creating provision in the by-law and to decide whether or not there may be a valid defence to the charge.

For a fuller discussion of the legal concept of "sufficiency" in proceedings under the Provincial Offences Act, refer to the comments under section 26, below.

Section 18. Payment Out of Court

18. Where the defendant does not wish to dispute the charge, he may deliver the notice and amount of the set fine to the place shown on the notice. R.S.O. 1980, c. 400, s. 18. Payment out of court

Section 18 sets out the option of making an out-of-court payment of the set fine shown on the PIN. If the defendant has decided not to dispute the charge as described on the PIN, he or she may deliver the PIN and the amount of the set fine to the place shown on the notice. For parking infractions under provincial legislation the place of payment will be the local office of the Provincial Offences Court, since provincial legislation does not authorize the acceptance of payments by provincial offences officers or specialized law enforcement agencies.

For parking infractions under municipal by-laws the place of payment may be an office of the local municipality, a police station, or perhaps one or more specified banking institutions. Section 18 allows for this practice to continue since it merely parallels the voluntary payment procedures authorized by subsection 321a(2) of the Municipal Act. Where the defendant does not wish to dispute the charge, there is no point in having the payment made first to the court, which would have to wait for the CPI to be filed and ultimately would disburse the fine revenue to the appropriate municipality. It is also significant that, where the set fine is delivered voluntarily, the Act does not speak in terms of a conviction being entered (by comparison refer to subsection 8(2) under Part I proceedings, in which endorsement of payment on the certificate of offence constitutes a conviction).

Section 19. Failure to Respond

Failure to respond to parking infraction notice

19.—(1) Where at least fifteen days have elapsed after the defendant was served with the parking infraction notice and the parking infraction notice has not been delivered in accordance with subsection 17 (1), the defendant shall be deemed to not wish to dispute the charge and a justice shall examine the certificate of parking infraction and where the justice is satisfied,

(*a*) that the certificate of parking infraction is complete and regular on its face;

(*b*) where the defendant is liable as owner, that he is the owner; and

(*c*) that payment has not been made under section 18,

the justice shall enter a conviction in the defendant's absence and without a hearing and impose the set fine for the offence.

Certificate as evidence

(1a) Where a certificate of parking infraction is issued for an infraction under a by-law of a municipality, a certificate purporting to be signed by the clerk of the municipality, or a person designated by the clerk,

(a) that payment has not been made under section 18; and

(b) that notice of the defendant's desire to appear or to be represented at trial has not been delivered to the place specified in the parking infraction notice,

shall be received in evidence and is proof of the facts contained therein in the absence of evidence to the contrary.

Where conviction without proof of by-law

(1b) Where a defendant is deemed to not wish to dispute a charge under subsection (1) in respect of a parking infraction under a by-law of a municipality, the justice shall enter a conviction under subsection (1) without proof of the by-law which creates the offence if the justice is satisfied that all other criteria under subsection (1) for entering a conviction have been met.

Quashing proceeding

(2) Where the justice is not able to enter a conviction under subsection (1), he shall quash the proceeding.

(3) The clerk of the court shall give notice to the person against whom a conviction is entered under subsection (1) of the date and place of the infraction, the date of the conviction and the amount of the fine. R.S.O. 1980, c.400, s.19.

Section 19 of the Act sets out the procedures which apply where the defendant has not exercised one of the two options available, of either requesting a trial or paying the set fine out of court. Under this procedure, the defendant will be deemed to not wish to dispute the charge, and a justice of the peace may then proceed to examine the CPI which has been filed in the court office, and, if certain pre-conditions have been established, is authorized to enter a conviction in the defendant's absence, without a hearing, and to impose the set fine for the offence.

The justice may proceed to conduct the "fail-to-respond" procedure at any time after fifteen days from the date when the defendant was served with the PIN. Assuming that evidence of vehicle ownership could be obtained very quickly, it is therefore theoretically possible for the CPI to be reviewed as early as the sixteenth day after the alleged parking infraction occurred. However, since ordinarily it will be more convenient to wait fifteen days before requesting proof of ownership, in order to see whether the set fine is paid voluntarily, it is likely that most municipal parking control agencies will not be filing the CPI until probably the thirtieth day after the offence or later.

It should be noted that no time limitation is placed upon the defendant's exercising the option of paying the set fine or of requesting a trial. Therefore, even though the prescribed form of the PIN advises the defendant that he may take such action within fifteen days, he or she cannot be precluded from paying the set fine or requesting a trial until a conviction has actually been entered. If the municipality still has the CPI in its possession, it is suggested that it is reasonable to accept payment of the set fine even though it is delivered some time after the fifteenth day following the commission of the offence. Similarly, it would be reasonable to accept a trial request which was made late as well, since ultimately every person charged will have the right to a trial unless the "fail-to-respond" process has already taken place. However, once the CPI has been filed in the court office, a municipality has no power to accept such late payments and trial

requests, and any defendant who seeks to exercise one of these options at this time must be advised to contact the court office.

In order to be able to enter a conviction, the justice must be satisfied of five essential pre-conditions:

1. that at least fifteen days have elapsed after the defendant was served with the PIN
2. that the PIN has not been delivered in accordance with subsection 17(1)
3. that the CPI is complete and regular on its face
4. that the defendant is the "owner" of the vehicle in question, where he or she is liable to conviction as owner
5. that payment of the set fine has not been made under section 18

With respect to items 2 and 5 above, the justice will require some evidence that neither a trial request nor payment of the set fine has been delivered to the place specified in the PIN which was served in the manner certified on the corresponding CPI. Subsection 19(1a) allows for proof of these facts to be made by means of a certificate signed by the clerk of the municipality or his or her designate. Where the parking infraction is under provincial legislation, formal proof of these matters is not required, since it is a basic principle of the law of evidence that public officers, such as the clerk of the court and his staff, are presumed to have done all things which their position requires them to do. Therefore, the very fact that the CPI for an offence is presented to a justice by the court staff for examination constitutes sufficient proof that they have carried out their duties by ensuring that neither a payment nor a trial request had been received. The form of the certificate from the municipal clerk will be prescribed by the rules of the Provincial Offences Court. This certificate must accompany the certificate control list which will be filed listing all CPI's in respect of which no payment has been received and no trial has been requested.

The justice who examines the CPI must be satisfied that it is "complete and regular on its face", in the same manner as a certificate of offence is examined in proceedings under Part I of the Act. On the basis of the practice which has been followed by the majority of judicial officers since 1980, it is likely that only the following major defects would lead a justice to conclude that a CPI was not complete and regular on its face:

1. *no date of the alleged infraction (or a date which is more than 45 days before the date on which the CPI was marked as being filed)*

2. *no person identified as defendant on the CPI (e.g., where the issuing provincial offences officer has crossed out both the words "owner or operator" on the CPI, it will not be alleged that any identifiable party has committed the offence described therein)*

3. *no location of the alleged infraction (although the location of the offence need not be specified with extreme precision, the justice must be satisfied that it is alleged to have occurred within the territorial jurisdiction of the particular Provincial Offences Court in which the CPI was filed)*

4. *no offence alleged on the CPI (for example, where the issuing officer has not indicated the specific infraction by marking an "X" opposite the pertinent short form wording preprinted on the CPI, or where it is not alleged that any by-law or statute has been contravened)*

5. *no set fine indicated on the CPI (it should be noted that there can be only one correct set fine for any particular offence, and that an incorrect set fine cannot be altered by the justice to show the correct amount)*

6. *no signature of the provincial offences officer who completed the CPI and the PIN*

7. *no certificate of service on the CPI by the provincial offences officer who issued the CPI (for example, where the officer has signed the CPI, but has forgotten to check off the appropriate box indicating the method of service, a justice would probably conclude that there was no clear statement as to how the PIN was served on the person charged*

If the error on the CPI does not fall into one of the major categories described above, it is submitted that a CPI would still be considered complete and regular, even though, for example, the location of the alleged infraction was not identified with much precision, such as, "Main St. n. of hydrant, Melonville". At a trial of course, a defect of this kind might form the basis upon which the court would order that the defendant be furnished with particulars in order that he or she could more effectively prepare a defence to the charge. See the discussion of particulars under section 36, below.

Where it is alleged that the owner of a vehicle has committed a parking infraction, he or she is liable to conviction as well as the person who actually caused the vehicle to be illegally parked. This principle of vicarious liability for the actions of the driver has been included in both subsection 181(1) of the Highway Traffic Act and subsection 321a(1) of the Municipal Act, and was discussed extensively by the Ontario Court of Appeal in the case of Regina v. Budget Rent-a-Car (1981), 57 c.c.c.(2d)201. Chief Justice Howland observed that: "To hold that the owner of a vehicle has committed a parking offence, where the vehicle is illegally parked by another to whom he has entrusted the vehicle, is not ethically repugnant".

As noted above in the discussion of subsection 16(1), evidence of vehicle ownership must be filed at the same time as the CPI is filed in court, and in fact both documents will be attached to the "court filing document". Subsection 181(3) of the Highway Traffic Act deems the holder of a permit issued under that Act to be the "owner" of the vehicle referred to in the permit, if a number plate bearing a corresponding number was displayed on the vehicle at the time an offence was committed, subject to the exception where the number plate was displayed on that vehicle without the consent of the permit holder. Since 1983, Ontario has operated under a "plate-to-owner" system of vehicle registration which affords greater certainty that any particular number plate will be linked to a specific person, regardless of which vehicle it was actually displayed upon. The concept of ownership under the Highway

Traffic Act relies upon the fact that a person has registered a particular vehicle under his or her name; it is irrelevant who the "real" owner may be in the property law sense, such as perhaps the permit holder's parent, or a leasing company which allows lessees to attach their own number plates to a vehicle leased for a period of one year or more.

Subsection 181(4) of the *Highway Traffic Act* covers the situation where a person has removed the number plates from one vehicle and attached them to another vehicle, but has not yet obtained a new permit for the vehicle which will link the new vehicle to the same plate number. Subsection 181(4) provides that where the number plate is exposed on such a vehicle, the holder of the permit corresponding to that plate shall be deemed to be the owner of that vehicle, unless the plate was exposed on the vehicle without his or her consent. Accordingly, a plate number now always relates to one specific person whom the law deems to be the owner of the vehicle.

Subsection 184(3) of the *Highway Traffic Act* allows for of a document identifying the holder of the plate portion of a permit to be accepted as evidence in all courts, where information from the records kept under that Act is certified by the Registrar of Motor Vehicles under the seal of the Ministry. Therefore, a justice of the peace may rely on the "ownership certificate" in order to be satisfied that the person named in it is the "owner" of the vehicle which is alleged to have been illegally parked. If it is beyond doubt that the same plate number appears both on the CPI and in the "ownership certificate", then legally the person named in the latter document is considered to be the vehicle owner, regardless of whether the description of the vehicle on the CPI matches the description of the vehicle which is contained in the records kept by the Ministry of Transportation and Communications.

It is submitted that the make and the colour of the vehicle are irrelevant details in a "fail to respond" proceeding, where the defendant has not requested a trial to testify that his vehicle was

not at the location where it is alleged that a certain vehicle was illegally parked, and perhaps to argue that the differing characteristics noted by the officer make it likely that he or she made an error in writing down the plate number. However, when the defendant has not requested a trial, it is proper for the justice to rely only on the plate numbers in order to be satisfied that the named permit holder was the owner of the illegally parked vehicle for the purposes of the Highway Traffic Act. It is well known that the current plethora of names assigned to motor vehicles makes it confusing to determine the actual "model", and terms used to describe colours can be quite subjective, so that what appears to be "blue" on the street could easily be recorded as "green" in the records of the Ministry of Transportation and Communications.

It should also be noted that the make and colour of the vehicle are not required elements of the prescribed form of the CPI, and have never been included as part of the elements of a charge as worded in informations under the Summary Convictions Act, any more than they would be in an impaired driving or speeding charge. Therefore, although it has been customary for parking control officers to record such features on parking tags for possible use in court, it is submitted that, in proceedings under section 19 of the POA, identity of plate number is the only matter which a justice must consider in satisfying himself or herself that the defendant was the "owner" of the illegally parked vehicle.

Subsection 19(1b) of the Act provides that a justice who is satisfied that all the other criteria for entering a conviction have been met, shall enter a conviction under subsection (1) without proof of the by-law which creates the offence. A court cannot take judicial notice of a municipal by-law as it can of a provincial statute or regulation, pursuant to subsection 7(1) of The Interpretation Act and subsection 5(4) of the Regulations Act. Therefore, in the absence of subsection 19(1b), a properly certified copy of the particular by-law would have to be presented as evidence when the default proceeding was being conducted. Where the defendant has not chosen to plead not guilty and request a

trial, however, there is no point in insisting upon proof of the by-law which creates the offence alleged on the CPI. Since there will likely be over one million such proceedings conducted each year when the Part II procedures apply across the Province, it is more practical to allow for a conviction to be entered without proof of the by-law in this situation only. At a trial, of course, the prosecutor always has the responsibility of proving the existence and content of the applicable by-law, by introducing a properly certified copy.

The concept of the "default conviction", where the defendant has failed to respond to the charge, is the cornerstone of the innovative streamlined procedures for minor offences under both Part I and Part II of the Act. Although this procedure might appear on a superficial analysis to offend the right of every person charged with an offence to be presumed innocent until proven guilty according to law, as guaranteed by clause 11(d) of the Charter of Rights, in light of the nature of the proceeding, it is impossible to seriously maintain such an argument. When the issue came before the Ontario Court of Appeal in the case of Regina v. Carson (1983), 41 O.R. (2d) 420, the Court firmly rejected the argument and stated that:

> *Having regard to the type and class of offences, the number of such cases, the reasons for the legislation, the options given to the person charged as to the disposition of his case and the provisions...to avoid any miscarriage of justice, we are satisfied that section 9 of the Provincial Offences Act (the default conviction procedure under Part I), in its context and effect, is a reasonable limitation such as is contemplated by section 1 of the Charter.*

It is submitted that, in the context of parking infractions, which are the most common and generally the least serious type of violation under provincial law, the comments made in the Carson case are even more appropriate in establishing that the default conviction procedure in section 19 is a provision which is demonstrably justified in a free and democratic society.

If one of the essential criteria for allowing a justice to enter a conviction has not been established, for instance, if the CPI is not complete and regular on its face because the officer forgot to sign it, then the justice must quash the proceeding. Under Part I of the Act, the rules of the Provincial Offences Court require a justice who quashes a certificate of offence to keep a separate record of his or her reasons for quashing a proceeding. It is expected that the pertinent rule will be amended to apply in a similar manner to proceedings under section 19 of the Act.

After a conviction has been entered, the clerk is required by subsection 19(3) to give notice to the defendant of the date and place of the infraction, the date of the conviction, and the amount of the fine. This notice will also advise the defendant of the date when the fine is due and the consequences of failing to pay the fine, such as the late payment fee under section 70a, and the possibility of the court ordering refusal of permit renewal privileges and ultimately issuing a warrant of committal.

Section 20. Reopening on Failure of Notice

Reopening on failure of notice

20. Where the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied by affidavit in the prescribed form of such facts, shall strike out the conviction, if any, and give the person appearing a notice of trial under subsection 17 (2) or accept a plea of guilty under section 18. 1979, c. 4, s. 20.

This section is designed to prevent a miscarriage of justice from occurring in circumstances where the defendant was prevented from exercising his rights to dispute the charge or appear to be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact. It is only where delivery of a necessary notice or document failed to occur through no fault of the defendant that this section operates. Examples involving the parking infraction notice not coming to the defendant's notice include surreptitious removal of the PIN by a third party or the PIN blowing away before the return of the driver to the car. Other examples where this section may apply include cases where the defendant mails in his PIN to the place specified therein in plenty of time but the PIN arrives late or not at all. Likewise, the clerk of the court may mail the notice of trial to the defendant but in some cases it may arrive late or not at all.

This provision may only be utilized by a defendant within 15 days of the date that the conviction first came to his or her attention. The defendant is required within the aforementioned 15 days to attend at the court office during regular office hours, may appear before a justice and must swear to an affidavit in the prescribed form. The affidavit will form the sole basis upon which the justice will decide whether the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact. It is suggested that the justice must be satisfied of the facts set out in the affidavit on the balance of probabilities. If satisfied, the justice must strike out the conviction, if any, and give the person appearing a notice of trial under subsection 17(2) or accept a plea of guilty under section 18.

While section 20 speaks in terms of the <u>defendant</u> attending at the court office and appearing before a justice, the section goes on to speak of the justice giving the <u>person</u> appearing a notice of trial or accepting a plea of guilty where the conviction, if any, is

struck out. While the defendant may appear by agent under this section, only the defendant can swear to the affidavit.

Note that Part II of the Provincial Offences Act has no equivalent to Part I of the Provincial Offences Act which, in section 7, permits the defendant the additional option of pleading guilty with representations as to penalty. Inappropriate use of this fail-safe provision should be minimized by section 86 of the Provincial Offences Act which provides that every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence.

Note that subsection 87(2) establishes a rebuttable presumption where the clerk of the court mails a notice to a person, including a notice of trial, that the notice or document is delivered to the person. It is doubtful whether the same rebuttable presumption applies where the defendant mails his PIN with a not guilty plea endorsed thereon to the place specified in the notice. See the discussion concerning subsection 87(1) below. The answer will be seen to be that the defendant takes the risk that delivery of the document or notice to the court occurs in fact.

There is no equivalent in section 20 to subsection 11(2), under Part I of the Act, which requires the justice to give the defendant a certificate of the fact that the conviction has been struck out. It is expected, however, that a similar certificate will be provided to persons who obtain the striking out of a conviction. This will be useful to a defendant in satisfying the Ministry of Transportation and Communications that a fine which was recorded against his vehicle permit as being in default has now been struck out as a result of the re-opening. Therefore, the defendant will be able to obtain renewal of the permit by presenting the certificate of the conviction being struck out, even though the renewal document indicates that the fine is in default. The clerk of the court will also remove the record of a defaulted fine from the central defaulted fines centre, but a period of two to five days may elapse before the record of a defaulted fine is removed from the MTC system.

Section 21. Regulations

Regulations

21.—(1) The Lieutenant Governor in Council may make regulations,

(*a*) prescribing the form of certificates of parking infractions and parking infraction notices and such other forms as are considered necessary under this Part;

(*b*) authorizing the use in a form prescribed under clause (*a*) of any word or expression to designate a parking infraction;

(*c*) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

Sufficiency of abbreviations

(2) The use on a form prescribed under clause (1) (*a*) of any word or expression authorized by the regulations to designate a parking infraction is sufficient for all purposes to describe the infraction designated by such word or expression.

Idem

(3) Where the regulations do not authorize the use of a word or expression to describe a parking infraction in a form prescribed under clause (1) (*a*), the offence may be described in accordance with section 26. 1979, c. 4, s. 21.

This section is virtually identical to section 13 in Part I of the Provincial Offences Act.

The certificate of parking infraction and parking infraction notice that is referred to in Part II are the forms prescribed by regulation made pursuant to this section and no others. This also applies to the notice of trial form under Part II that is also prescribed by regulation made pursuant to this section.

Subsection 21(2) provides that when a word or expression that has been authorized to designate a parking infraction under clause 21(1)(b) is used on a form prescribed under clause 21(1)(a), that word or expression is sufficient for all purposes to describe the infraction designated by that word or expression. Subsection 21(2) must be read as subject to clause 11(a) of the Canadian Charter of Rights and Freedoms, which requires that a person charged with an offence be informed without unreasonable delay of the specific offence. For example, if the expression "unlawful parking" were

prescribed by regulation to designate parking infractions involving unlawful standing and stopping as well as unlawful parking, could a defendant who was unlawfully standing argue that the phrase "unlawful parking" failed to inform him of the specific offence? Inasmuch as the parking infraction notice will be served at the time of the alleged parking infraction, it is worthwhile to consider the comments of McIntyre, J.A. in Regina v. Myers (1975), 23 C.C.C.(2d) 50 (B.C.C.A.) which dealt with a provision in British Columbia legislation (which was analogous to the power to proceed in the absence of designated words set out in subsection 21(3)) to the effect that it was not the intention of the Legislature to impose a duty to describe the violation or offence with all of the skill and particularity required of an indictment or information. Excluding Charter considerations, subsection 21(2) clearly overrides the general provisions of section 26 of the POA. Reference should be made to the annotation under section 26, below.

Subsection 21(3) permits short form wordings to be used to describe parking infractions where a regulation does not authorize the use of a word or expression to describe a parking infraction in a prescribed form. Specifically, this subsection requires that the offence be described in accordance with section 26. While the Myers case may be cited as some authority for the proposition that the failure to use designated words when they are available does not preclude the use of a word or expression to describe the offence that otherwise satisfies the requirements of section 26, the other interpretation of subsection 21(3) is that if the Legislature wanted to permit a parking infraction to be described according to section 26 notwithstanding that the use of a word or expression to describe that parking infraction had been authorized by regulation, it would have expressly provided for it. This will be the situation where short form wordings are created to describe parking infractions created by municipal by-laws, since the large number of such by-laws and frequent changes would make it impossible to have the wordings prescribed by regulation.

PART III

COMMENCEMENT OF PROCEEDING BY INFORMATION

Section 23. The "On-the-Spot" Summons

23. Where a provincial offences officer believes, on reasonable and probable grounds, that an offence has been committed by a person whom he finds at or near the place where the offence was committed, he may, before an information is laid, serve the person with a summons in the prescribed form. 1979, c. 4, s. 23. Summons before information laid

This section permits a provincial offences officer to begin Part III proceedings expeditiously by issuing a summons to the defendant "on-the-spot". This saves the inconvenience which would otherwise be caused by requiring the officer who investigates an offence to return to his office, prepare an information, appear before a justice to have it sworn, and then return to serve the summons on the defendant. Unlike the Part I or II procedures, an information must be prepared and sworn to after the summons under section 23 has been served.

The term "reasonable and probable grounds" has been defined as meaning that a reasonable man, having the means of knowledge available to the officer at the time, might conclude that the accused was guilty of the offence.

Under Part III of the Act, there is no limit on the possible penalty other than that in the statute or by-law which creates the specific offence, but only a provincial offences officer can utilize this procedure. It is unlikely that the "on-the-spot" summons will be used frequently, for the prosecution of parking infractions, since proceedings under Part II are much more convenient and faster. A possible situation where an officer might use the "on-the-spot" summons would be where a non-resident of Ontario had caused considerable inconvenience and potential hazard, by parking a large truck improperly at the edge of a highway. By serving the driver with a summons at the time of the alleged offence, the officer would be able to commence a proceeding and seek a significant deterrent penalty, even if the defendant chose not to attend in court for the trial.

Section 24. Laying an Information

24.—(1) Any person who, on reasonable and probable grounds, believes that one or more persons have committed an offence, may lay an information in the prescribed form and under oath before a justice alleging the offence and the justice shall receive the information. Information

(2) An information may be laid anywhere in Ontario. 1979, c. 4, s. 24. Idem

Although an informant may swear the information at any place in Ontario, the proceedings will have to be made returnable in a court having jurisdiction over the offence. See the comments regarding section 30, below, dealing with the territorial jurisdiction of the Provincial Offences Court.

A proceeding may still be commenced by the laying of an information. If Part III is used, a person who is charged with an offence will be given a summons, which commands him or her to appear in the Provincial Offences Court. There is no out-of-court settlement or walk-in plea of guilty under Part III.

This section enables individuals who are not provincial offence officers to commence proceedings if they have grounds to believe that a person has committed a parking infraction. Therefore, Part III may be used by persons who are not within a category of law enforcement personnel which has been designated by a Minister of the Ontario government pursuant to subsection 1(2), such as the superintendent of an apartment building.

Should a serious defect become apparent in relation to a CPI, and the defendant has not paid the set fine voluntarily, it is better that the CPI not be filed in court, in order that a new proceeding may be commenced under Part III. Proceedings under Part III will also be necessary where a cheque tendered by the offender as payment of the set fine has been returned "NSF". In that case a municipality may wish to send out a "Notice of Pending Summons" by mail, prior to laying an information. See the example of such a document in Appendix "B".

Section 25. Procedure for Laying an Information

25.—(1) A justice who receives an information laid under section 24 shall consider the information and, where he considers it desirable to do so, hear and consider *ex parte* the allegations of the informant and the evidence of witnesses and, Procedure on laying of information

(*a*) where he considers that a case for so doing is made out,

(i) confirm the summons served under section 23, if any,

(ii) issue a summons in the prescribed form, or

(iii) where the arrest is authorized by statute and where the allegations of the informant or the evidence satisfy the justice on reasonable and probable grounds that it is necessary in the public interest to do so, issue a warrant for the arrest of the defendant; or

(*b*) where he considers that a case for issuing process is not made out,

(i) so endorse the information, and

(ii) where a summons was served under section 23, cancel it and cause the defendant to be so notified.

Summons or warrants in blank

(2) A justice shall not sign a summons or warrant in blank. R.S.O. 1980, c. 400, s. 25.

A justice may act upon the sworn information alone and is not required to hear the allegations of the informant or the evidence of witnesses. Under subsection 25(1)(a), where he or she considers that a case has been made out, the justice may confirm a summons issued under section 23, or at that time may issue a summons to the defendant, or else issue a warrant for the arrest of the defendant.

It is important to note that a warrant for the arrest of a person can be issued only where the offence is one for which arrest is authorized by a statute such as the Highway Traffic Act. Also, the informant must satisfy the justice that "it is necessary in the public interest to issue the warrant to arrest". There is no general power of arrest for provincial offences. Nor is there any specific power of arrest in any statute relating to parking infractions, including the Municipal Act.

If the justice considers that a case for issuing process has not been made out, he or she will so endorse the information, and, if a summons was served under section 23, will cancel it and cause the defendant to be notified. The justice is not obligated to issue process, but must act judicially in reaching a decision, for instance by carefully considering such matters as whether any applicable limitation period for commencing proceedings has expired.

Section 26. Identifying and Describing the Infraction

26.-

Reference to statutory provision

(3) Where in a count an offence is identified but the count fails to set out one or more of the essential elements of the offence, a reference to the provision creating or defining the offence shall be deemed to incorporate all the essential elements of the offence.

Particulars of count

(6) A count shall contain sufficient detail of the circumstances of the alleged offence to give to the defendant reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to.

Sufficiency

(7) No count in an information is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of this section and, without restricting the generality of the foregoing, no count in an information is insufficient by reason only that,

(*a*) it does not name the person affected by the offence or intended or attempted to be affected;

(*b*) it does not name the person who owns or has a special property or interest in property mentioned in the count;

(*c*) it charges an intent in relation to another person without naming or describing the other person;

(*d*) it does not set out any writing that is the subject of the charge;

(*e*) it does not set out the words used where words that are alleged to have been used are the subject of the charge;

(*f*) it does not specify the means by which the alleged offence was committed;

(*g*) it does not name or describe with precision any person, place or thing; or

(*h*) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.

Need to negative exception, etc.

(9) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information. 1979, c. 4, s. 26.

The offence which is alleged in the information must be described in accordance with this section. Section 26 is based upon provisions in the Criminal Code, but also gives statutory effect to the decision of the Supreme Court of Canada in the case of R. v Côté. The Court stated that the test for the sufficiency of an information is:

> *...whether the accused was reasonably informed of the transaction alleged against him, thus giving him the opportunity of making a full defence and ensuring a full trial. Where ... the information recites all the facts and relates them to a definite offence identified by the relevant section, it is impossible for the accused to be misled.*

Therefore, the key element in setting out a count is the need to clearly identify the offence with which the defendant is charged. Short forms of wordings are generally used by the officer in completing the "ticket" and reference may then be made to the pertinent by-law for the exact wording of the offence-creating section. The offence must be identified as well as the transaction, and information must be given as to the act or omission. The section number alone cannot be used to identify the offence, although subsection (3) provides that a reference to the section number shall be deemed to incorporate all the essential elements of the offence.

Subsection (6) states that a count must contain sufficient detail of the alleged offence to give the defendant reasonable information about the act or omission charged, and to allow him or her to identify the transaction referred to. This rule must be kept in mind when preparing the short form wordings. For example, describing an offence as "Handicapped - Schedule A" is not sufficient, as it does not give the person charged any idea about what the act or omission is that is alleged to have been committed. A better description of the offence might be "Park in handicapped zone - Schedule A", since this gives the person reasonable information as to exactly what it is that he is charged with.

Subsection (7) sets forth examples of matters which will not render a charge insufficient, such as a failure to describe the place where the alleged infraction took place with precision.

Reference should also be had to subsection (9) which clarifies what is required on an information and assists in drafting the short form wordings. It provides that an exception, excuse or qualification prescribed in the by-law does not need to be set out in the information or certificate. For example, if the offence is parking on private property, the parking infraction notice and certificate of parking infraction do not need to contain the words "without consent of the owner". The lack of consent may be an element of the offence that must be proved at trial, but it is not necessary for that element to be contained in the description of the offence or short form wording used in the certificate.

Section 27. Serving the Summons

Summons

27.—(1) A summons issued under section 23 or 25 shall,

(*a*) be directed to the defendant;

(*b*) set out briefly the offence in respect of which the defendant is charged; and

(*c*) require the defendant to attend court at a time and place stated therein and to attend thereafter as required by the court in order to be dealt with according to law.

Service

(2) A summons shall be served by a provincial offences officer by delivering it personally to the person to whom it is directed or if that person cannot conveniently be found, by leaving it for him at his last known or usual place of abode with an inmate thereof who appears to be at least sixteen years of age.

Service outside Ontario

(3) Notwithstanding subsection (2), where the person to whom a summons is directed does not reside in Ontario, the summons shall be deemed to have been duly served seven days after it has been sent by registered mail to his last-known or usual place of abode.

Service on corporation

(4) Service of a summons on a corporation may be effected by delivering the summons personally,

(*a*) in the case of a municipal corporation, to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation; or

(*b*) in the case of any other corporation, to the manager, secretary or other executive officer of the corporation or person apparently in charge of a branch office thereof,

or by mailing the summons by registered mail to the corporation at an address held out by the corporation to be its address, in which case the summons shall be deemed to have been duly served seven days after the day of mailing.

Subsection 27(1) is derived from subsection 455.5(1) of the Criminal Code. It sets forth the necessary contents of the summons under Part III of the Act, in that it requires that the summons be directed to the defendant, state the charge and require the defendant to attend in court. Section 90 of the Act provides that a defect in the summons will not affect the validity of the proceedings, since the summons is merely the document which secures the defendant's attendance in court.

Subsection (2) requires personal service of the summons by a provincial offences officer. If the defendant cannot be found, the summons may be left at the defendant's last known or usual place of abode with an inhabitant who appears to be at least sixteen years of age.

Under subsection (3), if the person charged resides outside of Ontario, the summons may be served by registered mail. The summons is deemed to have been served seven days after it was mailed.

Service on a municipal corporation may be effected by serving the mayor, reeve or other chief officer, or the clerk. It will be up to the court to determine who is included in "other chief officer" but it is clear that this term indicates a person who exercises managerial responsibilities on behalf of the municipal corporation.

Other corporations may be served by serving the manager, secretary, or other executive officer, or a person apparently in charge of a branch office. Also, registered mail will now be considered as valid service on the corporation.

PART IV

TRIAL AND SENTENCING

Trial

Section 29. Application of Part IV

29. This Part applies to proceedings commenced under this Act. R.S.O. 1980, c. 400, s. 29. Application of Part

Part IV of the Provincial Offences Act governs trial procedures and sentencing for parking infractions. Under Part II a trial will not be held unless the defendant requests one by signing the plea of not guilty on the PIN and delivery to the place specified on it.

The procedures contained in Part IV of the Act apply regardless of whether a proceeding has been commenced under Part I, Part II, or Part III of the Act.

Section 30. Territorial Jurisdiction of the Court

30.—(1) Subject to subsection (2), a proceeding in respect of an offence shall be heard and determined in the provincial offences court in whose territorial jurisdiction the offence occurred. Proper court

For historical reasons, there has always been a strong presumption that a trial should be held in the county where the offence occurred. The Act maintains this principle in subsection 30(1), with the modification in subsection (2) which is intended to enchance the convenience of the parties to the proceeding. Therefore, a parking infraction alleged to have been committed in Wallaceburg will be tried in Wallaceburg, even though the defendant may be from Toronto. Most justices of the peace have province-wide appointments which permit them to act in any location in accordance with the functions for which they have been designated.

It is important the place where the alleged infraction took place be clearly stated on the certificate of parking infraction, since a mere street location is not sufficient to allow the court to determine that it has jurisdiction over the offence. Therefore, the name of the specific municipality in which the offence occurred should always appear as part of the charge on the certificate. The words "Wellington Street, north of Highway 401", for example, are inadequate to enable a court sitting in London to determine that the offence is alleged to have occurred in the County of Middlesex, even though the certificate may contain references to the City of London in other parts of the form, or perhaps a municipal crest.

Section 35. Powers of Amendment

Amendment of information or certificate

35.—(1) The court may, at any stage of the proceeding, amend the information or certificate as may be necessary if it appears that the information or certificate,

(*a*) fails to state or states defectively anything that is requisite to charge the offence;

(*b*) does not negative an exception that should be negatived; or

(*c*) is in any way defective in substance or in form.

Idem

(2) The court may, during the trial, amend the information or certificate as may be necessary if the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the trial.

Variances between charge and evidence

(3) A variance between the information or certificate and the evidence taken on the trial is not material with respect to,

(*a*) the time when the offence is alleged to have been committed, if it is proved that the information was laid or certificate issued within the prescribed period of limitation; or

(*b*) the place where the subject-matter of the proceedings is alleged to have arisen, except in an issue as to the jurisdiction of the court.

Considerations on amendment

(4) The court shall, in considering whether or not an amendment should be made, consider,

(*a*) the evidence taken on the trial, if any;

(*b*) the circumstances of the case;

(*c*) whether the defendant has been misled or prejudiced in his defence by a variance, error or omission; and

(*d*) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.

Amendment, question of law

(5) The question whether an order to amend an information or certificate should be granted or refused is a question of law.

Endorsement of order to amend

(6) An order to amend an information or certificate shall be endorsed on the information or certificate as part of the record and the trial shall proceed as if the information or certificate had been originally laid as amended. R.S.O. 1980, c. 400, s. 35.

This section governs amendments to the certificate of parking infraction. Under subsection (1), a court is permitted to amend an information or certificate before trial. The purpose of this section is to ensure that the defendant is fully aware of the allegations against him, while also ensuring that an insurmountable wall of technicalities is not constructed around the drafting of the charge. The general rule is that defective certificates should be amended rather than quashed. However, an amendment to charge a completely different offence will not be permitted.

A defect in the spelling of a defendant's name in an information or certificate of offence does not afford a basis upon which a trial judge can refuse to proceed to a decision on the merits; Regina v. McGilvary (unreported); Regina v. Schedewitz. In Regina and J.F. Brennan & Assoc. Ltd. (1981), 61 C.C.C. (2d) 1 (Ont. H.C.J.), a lower court had quashed an information on the basis that the word "Limited" had been left off the information. The Court held that that decision was erroneous and that the lower court could have amended the information. Mr. Justice Osler said:

> The statute obviously presents a built-in bias in favor of amendment over quashing and leaves it to the Court to consider whether or not this can be done without injustice.

It is clear, therefore, that it must be demonstrated that there will be an injustice resulting from an amendment before one would be denied.

Where the information discloses no offence which is known to law, the justice has no power to amend the information and proceed with the hearing. The proceedings taken on such an information are not an irregularity but a nullity.

The court, on motion of the prosecutor may correct clerical errors or errors in the form of the information or certificate. The objection on these grounds by the defence should be taken before the plea in order to permit the court to amend the charge before the evidence is heard.

Any application to amend an information which is defective in that it does not conform to the evidence should not be heard until the court has first heard the evidence disclosing the matter to be alleged in the proposed amendment. If the court fails to do so, it will be acting improperly, and, as a general rule, a conviction based on such an amended information will be quashed. If the requested amendment would substitute a different transaction from the first one alleged or would render a different plea necessary, it ought not to be made.

The court, in considering whether or not to make the amendment, must also consider the evidence taken on the trial, the circumstances of the case, whether the defendant has been prejudiced by the defect in the charge, and whether the amendment will prejudice his or her defence. If the court is of the opinion that the defendant has been misled or prejudiced in his or her defence by the error or omission in the information or certificate which it proposes to amend, it may adjourn the trial.

If the objection to the information is that it is duplicitous, that is, that it discloses more than one offence, it is clear that the court has power to amend. Subsection 34(1) of the Act permits a defendant to apply to the court to amend or divide a count that is double or multifarious. An example of a duplicitous count is "Stop or park in fire access route". Clearly, one can stop or one can park, but one cannot do both at the same time and the officer must choose which offence that is being alleged.

It is suggested that if any amendment is allowed, other than a minor clerical error, the defendant should be asked if he or she is prepared to proceed nothwithstanding the amendment; if an adjournment is requested, it should be granted so that the defendant may make full answer and defence to the charge. The court may award costs under section 38. See the comments under section 61, below, concerning the items in respect of which costs may be awarded.

Section 36. Particulars

36. The court may, before or during trial, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant. R.S.O. 1980, c. 400, s. 36. Particulars

While the court may order particulars to be furnished to a defendant if it is necessary to ensure a fair trial, it is preferable for the municipality to provide the information if requested to do so prior to the trial. This will minimize the number of adjournments that may be required. Particulars are more precise details, over and above the short form wording, which the defendant may require in order to properly defend the charge.

A defendant who is unable to prepare his or her defence properly because the charge does not contain sufficient information may apply to the court for particulars. If the court is satisfied that such particulars are necessary in order to ensure a fair trial, it will order the prosecution to furnish the defendant or his or her counsel or agent with the particulars requested. The granting or refusing of particulars rests with the discretion of the court. A defendant is not entitled to particulars as a matter of right, and the ruling of the trial justice will not be disturbed by an appellate court where the discretion has not been abused.

The court is not restricted in what particulars may be ordered and may, in deciding whether or not a particular is required, give consideration to any evidence that has been taken on the charge.

When the Court orders particulars to be delivered, the particulars are then entered on the record. The trial will then proceed as if the information had been amended to conform with the particulars delivered, and, if the prosecutor fails to prove the charge or count as particularized, the case must fail. If particulars are not delivered in accordance with the order, the charge will be dismissed.

The minimum requirement of a certificate or information is that, whatever may be its mode of expression, not only shall it contain sufficient detail of the circumstances of the alleged offence to give the accused reasonable information as to the act or omission

to be proved against him, but also it must identify the transaction referred to. Provided that a certificate or information satisfies this two-fold test, and is referable to a single transaction, constituting an offence known to law, the absence or insufficiency of additional details is not material to the question of sufficiency. See the comments under section 26, above, concerning the standard for sufficiency of a charge under the Provincial Offences Act.

Section 37. Quashing an Information or Certificate

Motion to quash information or certificate

37.—(1) An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash the information or certificate before the defendant has pleaded, and thereafter only by leave of the court.

Grounds for quashing

(2) The court shall not quash an information or certificate unless an amendment or particulars under section 34, 35 or 36 would fail to satisfy the ends of justice. R.S.O. 1980, c. 400, s. 37.

If the defendant wishes to object to anything contained in the certificate of parking infraction, the objection must be raised with the court prior to plea. The certificate will only be quashed where an amendment or particulars would "fail to satisfy the ends of justice". Attention should be paid, however, to section 38, which provides that, if the certificate is amended or particulars are ordered and an adjournment is necessary as a result, the court may order costs payable to the defendant.

Defective certificates, therefore, will only be quashed in exceptional circumstances, however, care must be taken to ensure that the certificates are not defective in the first place. In this regard, it should be noted that neither the Ministry of the Attorney General nor the Chief Judge of the Provincial Offences Court has any power to confer any form of approval upon short form wordings devised by a municipality to describe offences under its by-laws.

This section ensures that a trial will be held on the merits of the case and that defendants will not be acquitted on the basis of technical arguments related solely to the drafting of the charge.

Section 46. Pleading to the Charge

Taking of plea

46.—(1) After being informed of the substance of the information or certificate, the defendant shall be asked whether he pleads guilty or not guilty of the offence charged therein.

Conviction on plea of guilty

(2) Where the defendant pleads guilty, the court may accept the plea and convict him.

Refusal to plead

(3) Where the defendant refuses to plead or does not answer directly, the court shall enter a plea of not guilty.

Plea of guilty to another offence

(4) Where the defendant pleads not guilty of the offence charged but guilty of any other offence, whether or not it is an included offence, the court may, with the consent of the prosecutor, accept such plea of guilty and accordingly amend the information or substitute the offence to which the defendant pleads guilty. R.S.O. 1980, c. 400, s. 46.

It is not necessary that the charge be formally read to the defendant by the court. The defendant can be told in simple plain language what it is that he is alleged to have done. An arraignment is necessary, however, even though the defendant has delivered a written plea of not guilty to the court.

If the defendant pleads guilty, this constitutes an admission of all of the essential elements of the offence. Under Part II, a plea of guilty would be entered in court on a trial date only by a defendant who had originally pleaded not guilty, but who subsequently changed his or her mind for whatever reason.

If a defendant who pleads guilty dispute any of the facts essential for a conviction, the plea should be struck by the justice and a trial held.

Where no plea is received from a defendant who has requested a trial, the court enters a plea of not guilty on the defendant's behalf. After hearing the evidence, the justice of the peace will review the certificate or information as if it were for trial, and only if satisfied that the defendant could have been convicted, will a finding of guilt be entered.

Subsection 46(4) arises in a situation where the officer has charged a person with an offence but, upon further review or reflection, it becomes apparent that that the person had committed not the the offence which was charged, but another offence. If the defendant wants to plead guilty to the other offence and the prosecutor agrees, then the court may accept the plea and amend the certificate or substitute the offence to which the defendant has

Section 48. Burden of Proving Exception

48. (3) The burden of proving that an authorization, exception, exemption or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the authorization, exception, exemption or qualification does not operate in favour of the defendant, whether or not it is set out in the information. R.S.O. 1980, c. 400, s. 48. Burden of proving exception, etc.

This section codifies the common law exception to the fundamental rule that the onus is upon the crown to prove each element of the offence to the degree required for that class of offences created by regulatory legislation. Such legislation creates offences by banning specified activities but excepts persons who have authority of the regulatory body to do the acts banned. Regina v. Lee's Poultry Ltd. (1985), 43 C.R. (3d) 289 (Ont. C.A.) is an example involving section 3 of the Meat Inspection Act, R.S.O. 1980, c. 260, which provides that no person shall engage in the business of operating a plant, other than an establishment, without a licence therefore from the Director, Mr. Justice Brooke in Lee's Poultry Ltd. relied upon a passage in R. v. Edwards, (1975) 1 Q.B. 27 (English C.A.), to the effect that, when the prosecution relies upon the equivalent of the subsection 48(3) exception, the court must construe the section under which the charge is laid and if the court finds that the section prohibits the doing of an act subject to provisos, exceptions and the like, then the prosecution can rely upon the subsection 48(3) exception. Mr. Justice Brooke stated at page 296 in Lee's Poultry Ltd. that subsection 48(3) of the Provincial Offences Act does not offend clauses 11(c) and (d) of the Charter.

When s. 48(3) applies, there is no need for the prosecution to prove a prima facie case of lack of excuse, qualification and the like, and secondly the onus is shifted to the defendant to prove the exception, proviso or the like on a balance of probabilities, that is, that the defendant was entitled to do the prohibited act. What rests on the defendant is the legal or otherwise described as the persuasive burden of proof but not the evidential burden.

Section 51. Appearance by Defendant/Corporation

Appearance by defendant

51.—(1) A defendant may appear and act personally or by counsel or agent.

Appearance by corporation

(2) A defendant that is a corporation shall appear and act by counsel or agent.

A defendant may elect to appear and act personally or may choose to appear and act by counsel, which is a barrister and solicitor entitled to practice in Ontario, or may choose to appear and act by agent. An agent is any person who has the authority of the defendant to represent him and who is not precluded to appear as the defendant's agent by reason of the court exercising its authority under subsection 51(3) and finding that the agent is not competent properly to represent or advise the defendant or does not understand and comply with the duties and responsibilities of an agent.

It is submitted that a defendant has the right to appear in person and be represented by his agent, subject to subsection 51(3), in the same way that a defendant can appear personally and be represented by counsel.

Note that while subsection 51(1) provides that a defendant may appear..., subsection 51(2) says that a defendant who is a corporation shall appear... . The reason for this distinction is that a corporation, being incorporeal (not of a human body) cannot appear personally and so cannot be the subject of a summons in the manner in which a human defendant could be compelled to appear personally via section 52 of the Provincial Offences Act.

Section 55. Ex Parte Conviction

55.—(1) Where a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, a notice of trial was given under Part I or II, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the defendant does not appear upon the resumption of a hearing that has been adjourned, the court, Ex parte conviction

(*a*) may proceed *ex parte* to hear and determine the proceedings in the absence of the defendant;

(*b*) may, if it thinks fit, adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the defendant; or

(*c*) may, where the defendant does not appear in response to the summons or warrant on the date to which the hearing is adjourned, proceed under clause (*a*) or (*b*).

Reference should be made to section 87 which is discussed below.

It was recently held by the Ontario Court of Appeal in Regina v. Felipa (1986), 55 O.R. (2d) 362, that section 55 which permits the court to hold an ex parte trial where the defendant does not appear for trial where it is proved, inter alia, that he has been served with a summons, does not offend against the guarantees in sections 7 and 11(d) of the Canadian Charter of Rights and Freedoms. At page 365, Mr. Justice Houlden stated:

> *Section 55 does not deprive the defendant of his right to be present at his trial. To exercise the right the defendant need only appear at the time and place fixed for the trial. The section merely provides the machinery to be employed if the defendant does not avail himself of his right to appear at the trial. Under subsection 55(1) the provincial offences court cannot proceed with the ex parte trial until the prosecution has proved that the defendant was served with the summons. The court's jurisdiction to proceed with the ex parte trial is discretionary. If the court sees fit, it can make use of the procedure set out in paragraph 55(1)(b) and issue a summons to appear or a warrant for the arrest of the defendant.*

Mr. Justice Houlden noted that the Provincial Offences Act is designed to provide a fair and efficient method for the trial.

Note that subsection 55(1) entitles the prosecution to a reasonable opportunity to prove that a summons was served, a notice of trial was given under Part I or II, an undertaking to appear was given or a recognizance to appear was entered into as the case may be. This may entail an adjournment being granted by the court in order to afford the prosecution a reasonable opportunity to do so. Frequently, it will be sufficient for the Crown to rely upon the presumption in subsection 87(2) that the notice of trial mailed by the clerk of the court in accordance with subsection 17(2) was delivered to ther defendant. Subsection 87(1) is the authority for the proposition that mail service of the notice of trial is sufficient notice to the defendant under subsection 17(2). The re-opening procedure in section 20 provides a simple method for a conviction to be struck out in cases where in fact a necessary document, such as notice of trial, has failed to arrive, and the defendant has not had an opportunity, etc.

The provisions of section 43 and subsection 55(2) should be referred to in relation to prosecuting the defendant for failing to appear at his trial.

Section 60. Minimum Penalties

60.—(1) No penalty prescribed for an offence is a minimum penalty unless it is specifically declared to be a minimum. Provision for minimum penalty

(2) Notwithstanding that the provision that creates the penalty for an offence prescribes a minimum fine, where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may impose a fine that is less than the minimum or suspend the sentence. Relief against minimum fine

(3) Where a minimum penalty is prescribed for an offence and the minimum penalty includes imprisonment, the court may, notwithstanding the prescribed penalty, impose a fine of not more than $2,000 in lieu of imprisonment. 1979, c. 4, s. 60. Idem, re imprisonment

Subsection 60(1) requires clear language in a statute or by-law in order for a purported minimum penalty to be recognized as such by a court. In establishing the set fine for any particular offence, the Chief Judge of the Provincial Offences Court will take into consideration the minimum penalty prescribed by law. If the language of the statute or by-law does not clearly declare the penalty to be a minimum penalty, then subsection 60(1) effectively states that there is no minimum penalty for the particular offence under consideration by the court.

Subsection 60(2) confers upon the court a discretion to provide relief against a minimum fine, even though it is clearly declared to be a minimum in the applicable legislation. A very stringent test is set out which must be met before this discretion can be invoked. Exceptional circumstances must be found to exist which would make it "unduly oppressive or otherwise not in the interests of justice" to impose the minimum fine. Since minimum fines prescribed in traffic and parking by-laws are usually of relatively modest amounts, it is unlikely that this provision will be resorted to in parking matters. However, if an individual came to court and demonstrated that, through ill health or other unusual circumstances, it would be impossible to pay a high minimum fine of $40, for example, then a court might be of the opinion that a reduction in the amount of the fine or a suspended sentence would be in order.

Section 61. Payment of Costs

61.—(1) Upon conviction, the defendant is liable to pay to the court an amount by way of costs that is fixed by the regulations. Fixed costs on conviction

(2) The court may, in its discretion, order costs towards fees and expenses reasonably incurred by or on behalf of witnesses in amounts not exceeding the maximum fixed by the regulations, to be paid, Costs respecting witnesses

(*a*) to the court or prosecutor by the defendant; or

(*b*) to the defendant by the person who laid the information or issued the certificate, as the case may be,

but where the proceeding is commenced by means of a certificate, the total of such costs shall not exceed $100.

Costs collectable as a fine

(3) Costs payable under this section shall be deemed to be a fine for the purpose of enforcing payment. R.S.O. 1980, c. 400, s. 61.

This section contains provisions with respect to the costs which are payable by the defendant or prosecutor in certain situations.

Subsection 61(1) states that the defendant is liable to pay court costs upon conviction in the amount fixed by the regulations. On the basis of cases decided previously, it would appear that the words "liable to" should be interpreted as allowing the justice who enters a conviction to exercise discretion whether or not to impose court costs. The items in respect of which costs may be imposed and the amounts of these costs are set forth in Regulation 815. No court costs are payable by the defendant who responds to a municipal parking infraction by delivering his PIN to the municipality and paying the set fine, because no proceeding has been commenced in the court and accordingly no conviction will be entered. Where a person has been charged with a parking infraction under provincial legislation, court costs of $3.75 will be payable for service of the PIN, since the proceeding must be dealt with by the court, because voluntary payment directly to the prosecutor is not authorized for those offences. Although no conviction is actually entered, a future provision of Regulation 815 will deem the delivery of the set fine to be a conviction for the purpose of imposing court costs.

Item 1(2) of Regulation 815 fixes the court costs upon a "default conviction" under section 19 at $2.50 This item reflects the expense of the additional steps which the court must take to process cases where the person charged has failed to respond through certain administrative steps and the review conducted by a justice in the absence of the defendant.

Item 3 fixes the costs payable upon an ex parte conviction at $3.75, and again is intended to recover some of the additional expenses incurred by the court in having to proceed with a trial in the defendant's absence. Ex parte trials will result under Part II when a defendant has requested a trial and then fails to attend at the appointed time, or under Part III when the defendant fails to appear in court in response to a summons which has been served in accordance with section 27.

Subsection 61(2) gives the court authority to order the defendant, or the person who has laid an information or issued a certificate, to pay costs towards fees and expenses reasonably incurred by or on behalf of witnesses. The fee for a witness who is in attendance on a date scheduled for trial is $6 per day, as well as $2.50 for travel expenses for each such witness who resides in the place where the trial is held. For witnesses who do not reside in the place where the trial is held, travel expenses are calculated at the rate of 42 cents per kilometre, pursuant to Ontario Regulation 283/82, as amended.

Where the proceeding has been commenced by means of a certificate of parking infraction under Part II, subsection 61(2) states that the total costs which the court may order in respect of witnesses are limited to $100. This limitation is designed to ensure that in proceedings concerning minor offences, the court costs do not rise to a level which is out of proportion to the relatively modest fine which may be imposed upon conviction.

It is not common for the payment of costs in respect of witnesses to be ordered at the conclusion of a routine trial for a provincial offence. A possible situation where a defendant might be ordered to pay costs to the prosecutor would be where the defendant requested a trial, and then on the day of trial requested an adjournment in order to obtain subpoenas for witnesses to give evidence in his or her defence, and ultimately on the new day set for trial did not appear in court. Since the officer who issued the CPI was required to attend to give evidence on the second date for trial, even though the defendant chose not to appear to present his purported defence, it would be reasonable for the prosecutor to ask the court to order costs to be paid in respect of that witness.

Subsection 61(3) provides that costs payable to the court or in respect of witnesses are deemed to be a fine for the purpose of enforcing payment. Therefore, the entire amount of the fine and any costs imposed may be collected in accordance with the methods provided under section 70 of the Act.

Section 65. Consecutive Terms of Imprisonment

Sentences consecutive

65. Where a person is subject to more than one term of imprisonment at the same time, the terms shall be served consecutively except in so far as the court has ordered a term to be served concurrently with any other term of imprisonment. 1979, c. 4, s. 65.

Section 65 reverses the traditional legal practice under the Criminal Code and the Summary Convictions Act of Ontario, whereby terms of imprisonment are ordinarily served concurrently. Therefore, persons who had incurred a large number of parking fines could effectively erase them by serving a number of separate terms of imprisonment simultaneously during a short stay in a local jail. The result was that the municipality involved and the courts lost large amounts of revenue from fines and costs, while the police and correctional institutes incurred the substantial expense of arresting and transporting the offender to jail, where he or she would go through admission procedures, be incarcerated, and then be released after a very short stay.

Although imprisonment will be resorted to only rarely in proceedings under the Provincial Offences Act, because of the availability of the "plate denial" sanction, the fact that sentences must now be served consecutively can be expected to encourage payment by persons whom a justice orders to be imprisoned for failing to pay a fine. It should be noted that this provision does permit the court to order a term of imprisonment to be served concurrently with any other term of imprisonment. This might occur where the justice who orders imprisonment for failure to pay a fine is aware that the defendant is already in prison as a result of the commission of other provincial or criminal offences, and therefore might consider that additional consecutive terms of imprisonment for failing to pay fines would be excessive.

Section 67. When Fine Due; Extensions of Time to Pay

When fine due

67.—(1) A fine becomes due and payable fifteen days after its imposition.

Notice where convicted *in absentia*

(5) Where a fine is imposed in the absence of the defendant, the clerk of the court shall give the defendant notice of the fine and its due date and of his right to apply for an extension of the time for payment under subsection (6).

Further application for extension

(6) The defendant may, at any time by application in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the application shall be determined by a justice and the justice has the same powers in respect of the application as the court has under subsections (3) and (4). 1979, c. 4, s. 67.

This subsection means that a fine is not due and payable until 15 days after its imposition. This relates to subsection 70(1) which provides that the payment of a fine is in default when any part of the fine is due and unpaid for fifteen days or more. The combined effect of these two subsections is that a fine is not in default unless any part of it remains unpaid 30 days after the date of its imposition. Until the fine is in default, no proceedings to collect the fine can be taken.

Subsection 67(5) obliges the clerk of the court to notify the defendant of a fine imposed in his or her absence, the date when the fine is due, and right to apply for an extension of time for payment under subsection 67(6). This subsection is intended to ensure that the defendant is aware of the imposition of the fine so that it may be paid voluntarily, and secondly, that the defendant is made aware of the right to apply to the court for an extension of time to pay the fine if unable to pay it in the time originally allowed by the court when the fine was imposed.

Subsection 67(6) permits the defendant to apply for an extension of time to pay the fine at any time subsequent to the date of the imposition of the fine. This right is afforded to the defendant regardless of whether he or she was asked whether an extension of time for fine payment, pursuant to subsection 67(2), at the time the court imposed the fine. Obviously, if the defendant was fined in absentia, the defendant's application under this subsection will be the first application and the court's first opportunity to consider granting an extension of time to pay the fine. While subsection 67(2) imposes a mandatory obligation upon the court at the time of imposition of a fine to consider an extension of time for payment of the fine where the defendant is present in court, under subsection 67(6) the defendant must apply to the court in the prescribed form filed in the office of the court to have the matter considered by a justice. The powers of the court in dealing with the application are governed by subsections 67(3) and (4), and reference to those annotations should be made.

It may happen that steps have been taken pursuant to section s 69 or 70 to collect the fine before the defendant makes his application under subsection 67(6) for an extension of time to pay the fine. At the time the steps were taken by the justice, there would have been the necssary foundation to make the "plate denial" order on default under subsection 70(2), or to issue a warrant under subsection 70(3), namely, that the fine was in default and the justice was satisfied that the necessary preconditions to the making of the order or the issuing of a warrant existed. The justice determining the application will be entitled to consider under subsection 67(4) whether the request is being made to avoid the consequences of civil enforcement under section 69, or the impact of a plate denial order, or of a warrant of committal. If the justice finds that the request is made in good faith and not to evade payment, then the justice must extend the time for payment of the fine. It is uncertain, whether such an extension has the effect of cancelling the warrant of committal, or of staying civil enforcement proceedings or an order for plate denial. According to the principle enunciated in R. v. Yamelst (1975), 22 C.C.C. (2d) 502 (B.C.C.A.), granting a further extension of time to pay a fine after a warrant of committal has been issued under the Criminal Code has the effect of rescinding the issuance of the warrant.

Reference should be made to clause 70(4)(b) which provides that in exceptional circumstances, the court which imposes the fine may order imprisonment in default of payment of the fine and that no extension of time for payment be granted. It is submitted that this paragraph precludes a justice hearing an application under subsection 67(6) from extending time to pay the fine even where the justice finds the request to be made in good faith and not made to evade payment in accordance with subsection 67(4). The power under clause 70(4)(b) is an exceptional one which can be exercised only where a conviction has been entered in open court, not in proceedings under section 19 where the defendant has failed to respond after being served with a certificate of parking infraction. One example might be the case where the defendant has a large number of unpaid fines from previous convictions, and the court has formed the opinion that plate denial and other reasonable methods of collecting the fine will not result in payment because of the defendant's obvious unwillingness to pay the fine imposed.

Section 70. Unpaid Fines and Enforcement Methods

Default

70.—(1) The payment of a fine is in default when any part of the fine is due and unpaid for fifteen days or more.

Order on default

(2) Where a justice is satisfied that payment of a fine is in default, the justice,

(*a*) shall order that any permit, licence, registration or privilege in respect of which a suspension is authorized by or under any Act for non-payment of the fine be suspended, not renewed or not issued until the fine is paid; and

(*b*) may direct the clerk of the court to proceed with civil enforcement under section 69.

Imprisonment for non-payment of fine

(3) A justice may issue a warrant in the prescribed form for the committal of the defendant where,

(*a*) an order or direction under clause (2) (*a*) has not resulted in payment within a time that is reasonable in the circumstances;

(*b*) all other reasonable methods of collecting the fine have been tried and failed or, in the opinion of the justice, would not likely result in payment within a reasonable time in the circumstances; and

(*c*) the defendant has been given fifteen days notice of the intent to issue a warrant and has had an opportunity to be heard.

The basic objective of the Provincial Offences Act is to attempt to avoid fines going into default and to reduce greatly the use of warrants of committal as a fine enforcement method. If the offender defaults on payment, the court has a number of options at its disposal to attempt to ensure that the fine is recovered.

Subsection 70(1) states that a fine is in default when any part of it is due and unpaid for fifteen days or more. Since a fine does not become due until fifteen days after it has been imposed, the Act therefore provides a minimum period of thirty days before any fine enforcement procedures will be taken.

Clause 70(2)(a) directs the justice first to order the suspension, non-issuance, or non-renewal of any permit, licence, registration or privilege, in respect of which suspension is authorized by any Act for non-payment of the fine. At present, the Highway Traffic Act authorizes driver's licence suspension and "plate denial" for this purpose, the latter method being reserved only for defaulted fines imposed for parking infractions. Once an order has been made directing that a person's vehicle permit not be validated, it will not be renewed until the fine is paid in full and, in addition, transfer of ownership of the denied plate will not be allowed, new plates will not be issued, credit or refund will be disallowed (except to pay off the fine) and the attachment of any plate owned by that person will not be allowed (except to attach the denied plate).

Clause 70(2)(b) of the Act also permits a justice to direct the court clerk to commence civil enforcement proceedings against the offender. After a certificiate of default has been filed in the appropriate civil court, the fine is enforceable in the same manner as any other court-ordered payment; if need be, the defendant's assets can be seized and sold to satisfy the unpaid fine. Because parking fines are usually of a relatively modest amount, it is doubtful that a municipality would seek to use this collection method, in light of the additional work and expense involved to collect a small amount of money.

Only when any available suspensions have been tried and have failed, and where the justice decides that civil enforcement or any other reasonable means of collecting the fine would not likely prove successful in a reasonable period of time, can a warrant of committal be issued for the arrest and incarceration of the offender. Before this can be done the offender must be given notice that the court intends to issue a warrant as well as an opportunity to be heard. The defendant could then appear and make representations to the justice as to why a warrant should not be issued. Since it is expected that "number plate denial" will be quite effective in promoting payment of parking fines, it is likely that there will be very few situations in which the court will be required to consider issuing a warrant of committal.

Although the Act therefore reduces the use of imprisonment as a sanction for non-payment, it does not eliminate it entirely. It should be remembered that a fine is a punishment, the purpose of which is to deter the offender and others from similar unlawful conduct. Under the Act, virtually nothing short of wilful non-payment will result in incarceration, but the offender who persistently fails to pay the fine imposed by the court will have no valid complaint when he or she is ultimately faced with the prospect of serving time in jail.

Section 70a. Late Payment Fee

70a.—(1) Where the payment of a fine is in default and the time for payment is not extended or further extended under subsection 67 (6), the defendant shall pay the administrative fee prescribed by the regulations. Fee where fine in default

(2) For the purpose of making and enforcing payment, a fee payable under this section shall be deemed to be part of the fine that is in default. Fee collectable as a fine

A large number of convicted persons prefer to avoid payment of fines imposed against them by simply not paying and hoping that any enforcement methods taken will be ineffective. Ultimately, if taken into custody pursuant to a warrant of committal, the majority of offenders find a way to pay a defaulted fine if they are able to do so. The additional work involved for the courts, the police, the correctional institutes, and, with respect to certain fines, the Ministry of Transportation and Communications, makes it worthwhile to attempt to encourage timely payment of fines by imposing an administrative fee where the fine has gone into default. Subsection 70a(1) is a new provision added to the Act in 1986 which authorizes the addition of a fee prescribed by regulation to each fine which is in default.

It is hoped that, in addition to promoting timely payment of fines, the new fee will help to recover some portion of the additional costs involved in trying to collect fines by means of driver's licence suspension, "number plate denial", or warrant of committal. The additional fee for payment after default should not create difficulties for persons who are temporarily unable to pay a fine, since every defendant has the right to apply for an extension of time to pay in accordance with the provisions of section 67.

Subsection 70a(2) deems the late payment fee to be a part of the fine that is in default for the purpose of making and enforcing payment. Therefore, a person will not be able to avoid paying the fee, simply by attempting to pay only the original amount of the fine. All such fees belong to the Province of Ontario, while the original amount of the fine is payable to the municipality whose by-law was contravened, subject to certain special arrangements in Metropolitan Toronto and some regional municipalities.

PART V

GENERAL PROVISIONS

Section 76. Limitation Periods

Limitation

76.--(1) Proceedings shall not be commenced after the expiration of any limitation period prescribed for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

Extension

(2) A limitation period may be extended by a justice with the consent of the defendant. 1979, c. 4, s. 76.

Notwithstanding the provisions contained in subsection 3(1), subsection 16(1) and subsection 22(1) which all relate to the commencing of a proceeding in respect of an offence, subsection 76(1) precludes the commencement of any proceeding under the Provincial Offences Act where the limitation period prescribed for the particular offence has expired. Where no limitation period is prescribed for the particular offence, subsection 76(1) precludes the commencement of any proceeding under the Provincial Offences Act where the date on which the offence is alleged to have been committed is more than six months before the date upon which it is sought to commence the proceedings in respect of that offence. In other words, the specific limitation period prescribed for a particular offence overrides the general 6 month limitation period prescribed by subsection 76(1) of the Provincial Offences Act. The significance of a limitation period is that if it expires before proceedings are commenced, in respect of an offence, the institution of proceedings in respect of that offence are barred, subject to subsection 76(2), absolutely.

For example, if the statute which creates the offence provides for a two-year limitatioan period for that offence, a proceeding cannot be commenced more than two years after the date on which the offence is alleged to have been committed. If the statute that creates the offence does not prescribe a limitation period for that offence, then proceedings may not be commenced in respect of that offence more than six months after the date on which the offence is alleged to have been committed.

An example of when a defendant might consent to the extension by a justice of a limitation period under subsection 76(2) would be where the defendant faces a charge of dangerous driving under the Criminal Code, the limitation period for the commencing of a careless driving charge under the Highway Traffic Act has expired and the Crown would be willing to proceed with the matter as a provincial offence rather than as a criminal matter but cannot do so without the defendant's consent under subsection 76(2), because the limitation period for commencing a proceeding for careless driving has expired.

Since the Municipal Act does not contain any provisions concerning limitation periods, any proceeding in respect of an alleged violation of a parking by-law must be commenced within six months if the proceeding is commenced by an information or, if a certificate of parking infraction has been issued under Part II, within 45 days of the alleged infraction.

Section 80. Common Law Defences

Common law defences

80. Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of offences, except in so far as they are altered by or inconsistent with this or any other Act. 1979, c. 4, s. 80.

Defences are created either by our Legislature and codified in statue, or by judges, in which case the defences wil be contained in the decisions of our courts which are referred to as case law. Any legal principle which has developed in the case law is commonly referred to as the common law. There are no defences provided for in the Provincial Offences Act. Accordingly, if there is to be a defence or defences for a particular offence, the defence will be found either within the statute which creates the offence or in the common law.

The defence of due diligence which was recognized by the Supreme Court of Canada in R. v. Sault Ste. Marie (1978), 2 S.C.R. 1299 is an example of a common law defence. Insanity is an example of a common law defence for a provincial offence which has been altered by the Criminal Code for purposes of criminal offences.

Therefore, when reading cases on the insanity defence where a criminal charge is at issue, it is important to remember that the court is governed by section 16 of the Criminal Code while the provincial offences court is not so bound, with the result that the case may not have application to the defence of insanity in the provincial offence context.

Section 81. Ignorance of the Law

Ignorance of the law

81. Ignorance of the law by a person who commits an offence is not an excuse for committing the offence. 1979, c. 4, s. 81.

This general rule is a principle which is fundamental to the administration of justice for very practical and obvious reasons. If the principle embodied in section 81 did not exist, the defendant's state of understanding of the law would be relevant to the issue of whether or not he or she were guilty of the offence charged. For example, a person could argue that when he parked his car, he did not know that there existed a parking by-law governing the location where he parked his car, which provided that no car shall park on any street for longer than 3 hours unless otherwise posted. If the rule set out in section 81 did not apply, in addition to the issue of whether the car was parked for more than 3 hours, the court would also have to deal with the issue of whether or not the defendant knew that what he did offended against the by-law. Plainly, the defendant could argue ignorance of the law, and the prosecution would then have the burden of proving that the defendant in fact did know of the parking by-law. Requiring the prosecution to prove such knowledge on the part of the defendant would be absurd. Therefore, for reasons of policy, the principle set out in section 81 has been applied strictly throughout the development of criminal and quasi-criminal law.

To illustrate the difference between mistake of fact, which does afford a defence, and ignorance of the law, which does not, consider the distinction between the situation of selling liquor to a minor where the vendor believes that the minor is over the age of 19 years, compared with that of selling liquor to the minor knowing that the person is a minor, but believing incorrectly that it is not illegal to sell liquor to a minor who is accompanied by a person who is over the age of 19 years. The former is an example of mistake of fact, while the latter is an example of ignorance of the law.

A newly developing aspect of this rule was raised in the case of R. v. Cancoil Thermal Corporation, a decision of the Ontario Court of Appeal, 27 c.c.c.(3d)295, which recognized the defence of officially induced error. The defence of "officially induced error" is available as a defence to an alleged violation of a regulatory statute where an accused person has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. In order for the accused to successfully raise this defence, he must show both that he or she relied on the erroneous legal opinion of the official, and that the reliance was reasonable. The reasonableness will depend upon several factors, including the efforts made to ascertain the proper law, the complexity or obscurity of the law, the position of the official who gave the advice, and the clarity, definitiveness and reasonableness of the advice given. Although this defence may overlap with the defence of due diligence, the defence of "officially induced error of law" is separate and distinct and can be asserted in the same way as other defences. It will be for the trier of fact to decide whether the accused has proved, by a preponderance of evidence, that he or she was misled by the advice given by the official. In summary, although mistake of law cannot be raised as a defence, an officially induced error of law may, in some circumstances, constitute a valid defence.

Although ignorance of the law is not in itself a defence, subject to the comments above, it may be a relevant consideration in mitigation of sentence.

Section 82. Counsel or Agent

Counsel or agent

82. A defendant may act by his counsel or agent. 1979, c. 4, s. 82.

It will be evident that the difference between the two above-noted provisions is that section 82 is really a subset of subsection 51(1). The drafters of the Provincial Offences Act indicate that section 82 was included out of an abundance of caution because it was felt that section 51, which appears in Part IV--"Trial and Sentencing", and in particular under the 'Trial' heading, that subsection 51(1) might be interpreted as applying only to the trial process. By including section 82 in Part V--"General Provisions", it becomes clear that a defendant can act by his counsel or agent in any context in which he can act personally, e.g., by sending his counsel or agent to ask for an extension of time for payment of fine, or to apply for re-opening of a proceeding under section 20, although only the defendant could swear the affidavit setting out the relevant facts concerning the reasons why he or she did not appear at a hearing.

Section 86. Penalty for False Statements

Penalty for false statements

86. Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence and on conviction is liable to a fine of not more than $1,000. 1979, c. 4, s. 86.

This section is very important to the integrity of the Provincial Offences Act since it has been necessary to afford a defendant certain fail-safe provisions in the Act such as section 20. As noted above, section 20 is designed to prevent a miscarriage of justice from occurring in circumstances where the defendant was prevented from exercising his rights to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact. In order for a defendant to avail himself of section 20, he must swear to an affidavit in the prescribed form. The affidavit will form the sole basis upon which the justice of the peace will decide whether the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact. It is abundantly clear that the scheme of this legislation would be endangered if the defendants were dishonest.

It should be noted that it is not necessary that the person have an intent to mislead or benefit from the assertion of fact. The only consideration is whether the person knew, at the time that he made the assertation of fact in the statement or document or form for use under the Act, that it was false.

The Criminal Code contains provisions such as perjury, attempt to obstruct justice and making a false document (forgery) which may also apply to a situation which falls within the scope of section 86.

Section 87. Delivery of Notice or Document

87. (1) Except as otherwise provided by this Act or the rules of the court, any notice or document required or authorized to be given or delivered under this Act or the rules of the court is sufficiently given or delivered if delivered, whether personally or by mail. Delivery

(2) Where a notice or document that is required or authorized to be given or delivered to a person under this Act is mailed to the person at his last known address appearing on the records of the court in the proceeding, there is a rebuttable presumption that the notice or document is delivered to the person. 1979, c. 4, s. 87. Idem

Subsection 87(1) governs delivery of documents by the defendant as well as to the defendant. It is important to realize that insofar as delivery of documents by the defendant is concerned, this subsection is not creating any sort of presumption or is otherwise deeming that delivery has occurred in fact where a defendant chooses to deliver a document by mail. This will become apparent from the wording of subsection 87(2). All subsection 87(1) does is declare that delivery need not be personal and in particular, that mail delivery is sufficient provided delivery actually occurs.

For example, rule 16 of Regulation 819 under the Provincial Offences Act governing Part III appeals requires the appellant to deliver one copy of the transcript of evidence at trial etc. to the respondent. The effect of subsection 87(1) is that if the appellant chooses to deliver the transcript by mail, that delivery will be sufficiently given to the respondent if it is actually delivered to the respondent. Subsection 87(1) does not relieve the defendant of the responsibility of ensuring that delivery of the document occurs in fact. A careful reading of the subsection will reveal that the document is sufficiently given or delivered under the Act or rules if delivered.

You will recall in our discussion of section 20 that the onus is upon the defendant to satisfsy the justice, by affidavit, that he fits within the conditions set out. It is a precondition to entitlement under section 20 that the delivery of a necessary notice or document failed to occur in fact through no fault of the defendant. As a practical matter, a justice may not be satisfied that fault does not rest upon the defendant where the defendant merely mails the document or asked a friend to put the document in the mail.

Unlike subsection 87(1), subsection 87(2) creates a rebuttable presumption that a document which is mailed to the defendant at his last known address appearing on the records of the court in the proceedings, will in fact reach him. The defendant will have to adduce evidence to show that delivery did not occur, in fact, to rebut the presumption. From the discussion above of section 55 which deals with ex parte convictions, you will recall that subsection 87(2) is frequently relied upon by the Crown.

Section 90. Irregularities in Form

90.—(1) The validity of any proceeding is not affected by, Irregularities in form

(*a*) any irregularity or defect in the substance or form of the summons, warrant, offence notice, parking infraction notice, undertaking to appear or recognizance; or

(*b*) any variance between the charge set out in the summons, warrant, parking infraction notice, offence notice undertaking to appear or recognizance and the charge set out in the information or certificate.

(2) Where it appears to the court that the defendant Adjournment to meet irregularities has been misled by any irregularity, defect or variance mentioned in subsection (1), the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 61 for the payment of costs. 1979, c. 4, s. 90.

Not every failure to comply with the requirements of the Provincial Offences Act will invalidate the proceeding. For example, if the provincial offences officer fails to sign the certificate of parking infraction, as required by subsection 16(2) of the Act, the proceedings would be invalidated because the failure goes to the jurisdiction of the Provincial Offences Court to hear the matter. However, if the provincial offences officer fails to sign the offence notice, as required by subsection 3(2), it has been held by the Ontario Court of Appeal in R. v. Elliott(1981), 12 M.V.R.35 that such failure constitutes only an "irregularity or defect in the substance or form" within the meaning of subsection 90(1) of the Act. Consequently, the validity of the proceeding was not affected by the failure of the provincial offences officer to sign the offence notice. The offence notice is analogous to the parking infraction notice. In order to understand the reason for the decision, it is helpful to distinguish between the certificate of parking infraction and the parking infraction notice. The former is the document which charges the person with having committed an offence and which gives the Provincial Offences Court jurisidiction to adjudicate the matter. The latter is simply a form of what is referred to as 'process', which requires the person charged to take some action in response to the charge. Unlike the summons, undertaking to appear, and recognizance, the parking infraction notice does not set out a court date since it affords the person charged the option of not disputing the charge by delivering the notice and the amount of the set fine to the address stipulated in the notice within 15 days of service of the notice.

It is suggested that another example of an irregularity or defect in the substance or form of a parking infraction notice would be where the parking infraction notice contains all the essential information that is set out in the form prescribed by regulation, but does not follow the format, and perhaps also adds additional information to that which must be included to comply with the prescribed form. It is anticipated that each municipality will find it convenient to make such alterations to better enable them to meet the unique needs of their administrative systems. Clause 27(d) of

the Interpretation Act R.S.O. 1980, c.219, provides that in every Act, unless the contrary intention appears, where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead do not vitiate it.

By way of an extreme illustration, even a very defective form of process would not affect the court's jurisdiction to try the person charged, if that person had come before the Provincial Offences Court to deal with the charge. If the person were not before the court, and the proceeding had been commenced under Part III, the court would be entitled to issue fresh process because, as stated, a defect in process, no matter how substantial, does not affect the court's jurisdiction to deal with the proceeding.

Subsection 90(2) of the Act affords the court the ability to adjourn the hearing and make such order as the court considers appropriate, including an order under section 61 for the payment of costs, where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned in subsection 90(1). Obviously, a defendant whose parking infraction notice had not been signed by the provincial offences officer will not have been misled. A more likely case where the court might resort to subsection 90(2) would be where for some reason there has arisen a variance between the charge set out in the certificate of parking infraction and the charged described in the parking infraction notice. The basis for the adjournment would be the the court's opinion, acting under subsection 90(2), that the defendant had been prejudiced by the irregularily, defect or variance. An example may be where the charge set out in the parking infraction notice differs significantly from the charge as set out in the certificate of parking infraction, because of the misalignment of the short form wordings preprinted on the two forms.

Section 91. Regulations

91. The Lieutenant Governor in Council may make regulations, Regulations

(*b*) prescribing the form of certificate as to ownership of a motor vehicle given by the Registrar under subsection 184 (3) of the *Highway Traffic Act* for the purpose of proceedings under this Act; R.S.O. 1980, c. 198

(*c*) fixing costs payable upon conviction and referred to in subsection 61 (1);

(g) prescribing administrative fees for the purposes of subsection 70a (1) for the late payment of fines or classes of fines, and prescribing the classes.

Section 91 is the general provision in the Act which authorizes the making of regulations in respect of various matters. Clause (b) authorizes the prescribing by regulation of the form of the certificate as to the ownership of a motor vehicle which is provided by the Ministry of Transportation and Communications. Since 1985 the certificate of the Registrar of Motor Vehicles has been furnished in the format of a small document under the seal of the Ministry with an adhesive backing in order that it may be affixed to a copy of a parking "tag", or other document, for use in proceedings under the Summary Convictions Act or the Provincial Offences Act. Subsection 184(3) of the Highway Traffic Act states that such a certified statement containing information from records kept under that Act shall be received in evidence in all courts and is prima facie evidence of the facts contained therein. Therefore, it is not necessary for a regulation to be made under clause (b) prescribing the form of this certificate, but for greater certainty such a regulation may be made at a future date.

Clause (e) is the authority for regulations prescribing the costs payable upon conviction. See the discussion under section 61, above.

Clause (g) is a new provision authorizing the making of regulations to prescribe administrative fees for the late payment of fines. At present the fee payable for any fine imposed under the Provincial Offences Act which has gone into default is $10, although clause (g) allows different fees to be prescribed for different classes of fines, in the event that this were to be considered necessary at a future date.

PART VI

APPEALS AND REVIEW

Section 92. Interpretation

Interpretation

92. In this Part,

(*a*) "counsel" when used in respect of proceedings in a provincial court (criminal division) includes an agent;

(*b*) "court" means the court to which an appeal is or may be taken under this Part;

(*c*) "judge" means a judge of the court to which an appeal is or may be taken under this Part;

(*d*) "rules" means the rules made under section 123;

(*e*) "sentence" includes any order or disposition consequent upon a conviction and an order as to costs. 1979, c. 4, s. 92 (1).

Section 92 begins Part VI of the Act, which among other things governs appeals under Part II (sections 118 to 122) as well as reviews (sections 124 to 126). A review is a prerogative remedy whereby the Supreme Court of Ontario is empowered to grant certain kinds of supervisory relief over the decisions made by lower courts. Aside from the specific sections which comprise Part VI of the Act, there are rules for the conduct of and governing the practice and procedure on appeals which are prescribed by regulation pursuant to section 123 of the Act. Indeed, clause 92(d) of the Act expressly defines rules to mean the rules made under section 123.

Unlike section 1 which is an interpretation provision that applies throughout the Act, section 92 applies only to Part VI of the Act. Clause 92(a) defines "counsel" to include an agent in respect of proceedings in a Provincial Court (Criminal Division). Since section 122 provides for an appeal from the judgment of the Provincial Court (Criminal Division) to the Court of Appeal, with

permission of that Court, it follows that clause 92(a) precludes the use of an agent in that court. The word "counsel" is not a term defined elsewhere in the Act. The Law Society Act, R.S.O. 1980, c. 233, speaks of a barrister and solicitor, rather than a counsel. It is submitted that the usual meaning given to the term "counsel" is a barrister and solicitor.

Clause 92(e) defines "sentence" to include any order or disposition consequent upon a conviction as well as an order as to costs. This is an important definition, since section 118 speaks of appealing an acquittal, conviction or sentence. As a result, the appeal provisions of section 118 apply to virtually any result that would likely be experienced, except in circumstances such as where, pursuant to subsection 19(2), the certificate of parking infraction is quashed.

Section 94. Payment of Fine Before Appeal

Payment of fine before appeal

94.—(1) A notice of appeal by a defendant shall not be accepted for filing if the defendant has not paid in full the fine imposed by the decision appealed from.

Subject to subsection 94(2), the fine which was imposed by the court being appealed from must be paid in full before a notice of appeal will be accepted for filing. For example, if upon conviction the sentence consists of a $53.75 fine, the full amount of that fine must be paid before the defendant can file the notice of appeal, unless subsection 94(2) is successfully resorted to. It is important to realize that it is the filing of the notice of appeal that actually commences the appeal. Where there are court costs imposed by the decision appealed from in addition to the fine, both the amount of the fine and the court costs must be paid in full before the notice of appeal will be accepted for filing. The purpose of subsection 94(1) is to prevent a person from delaying payment of the fine by filing an appeal where payment would not constitute a financial hardship.

Situations will arise where payment of the fine by the defendant prior to filing the notice of appeal would work a financial hardship. Subsection 94(2) permits a defendant to apply to a judge to be allowed to enter into a recognizance to appear on the appeal, instead of paying the fine. A recognizance is an acknowledgement of an indebtedness to Her Majesty The Queen by the defendant and sureties, if any, which will be of no effect only if the defendant appears on the appeal. Sureties are persons who guarantee the happening of the condition in the recognizance, in this case that the defendant will appear on the appeal. In this way, financial hardship will not be a barrier to any defendant to exercise the right of appeal under Part VI of the Act.

Rule 8 of the Rules governing appeals under section 118 of the Act (Regulation 820) requires a defendant who appeals from a decision imposing a fine to file with the notice of appeal a receipt for payment of the fine issued by the clerk of the court that imposed the fine, unless subsection 94(2) of the Act applies. Rule 11 of the Rules governing appeals under section 99 of the Act is to the same effect as Rule 8.

Section 97. Payment of Fine Not Waiver

97. A person does not waive his right of appeal by reason only that he pays the fine or complies with any order imposed upon conviction. R.S.O. 1980, c. 400, s. 97. Payment of fine not waiver

This section makes it clear that so long as a person is otherwise entitled to appeal, it is not too late to appeal merely because payment of the fine and compliance with any order imposed upon conviction has been made by that person. Indeed, as was noted above in the discussion of subsection 94(1), a person who wishes to file a notice of appeal must first pay the fine and court costs in full. Thus, compliance with section 94 will not result in forfeiture of the defendant's right to appeal.

Section 118. Appeal Under Part I and II

118.—(1) A defendant or the prosecutor or the Attorney General by way of intervention is entitled to appeal an acquittal, conviction or sentence in a proceeding commenced by certificate under Part I or II and the appeal shall be to the provincial court (criminal division) of the county or district in which the adjudication was made. Appeal

(2) A notice of appeal shall be in the prescribed form and shall state the reasons why the appeal is taken and shall be filed with the clerk of the provincial court (criminal division) within fifteen days after the making of the decision appealed from, in accordance with the rules. Application for appeal

Notice of hearing

(3) The clerk shall, as soon as is practicable, give a notice to the defendant and prosecutor of the time and place of the hearing of the appeal. R.S.O. 1980, c. 400, s. 118.

Part VI of the Provincial Offences Act provides for two separate appeal procedures depending upon whether the proceeding had been originally commenced under Part III, or Parts I or II of the Act. If the parking infraction had been alleged in an information, the procedure which governed commencement of the proceedings would be that which is set out in Part III, and the procedure applicable to the appeal would commence at section 99 of the Act. If the proceeding was commenced by means of a certificate of parking infraction, the procedure which governed commencement of the proceedings would be that which is set out in Part II, and the procedure that governs the appeal will be the procedure set out commencing with section 118 of the Act.

The procedure governing an appeal of a proceeding that had been commenced under Part II will also be governed by the Rules of Practice And Procedure On Appeals In The Provincial Courts (Criminal Division) Under Section 118 Of The Act. These Rules are found in Regulation 820 of the Revised Regulations of Ontario under the Provincial Offences Act. The procedure governing an appeal of a proceeding that had been commenced under Part II will also be governed by the Rules Of Practice and Procedure On Appeals In The District Courts and the Provincial Courts (Criminal Division) Under Section 99 Of The Act. These Rules are found in Regulation 819 of the Revised Regulations of Ontario under the Provincial Offences Act. The reason these Regulations apply to Part I, II and III

appeals is because of the definition of rules in clause 92(d) and for example, in the case of Part I and II appeals, subsection 118(1) directs that the appeal shall be to the Provincial Court (Criminal Division) of the county or district in which the decision being appealed from was made. To like effect, in the case of Part III appeals, is subsection 99(2) of the Act.

In a nutshell, subsection 118(1) declares who may appeal and where the appeal is to be brought. In short, the defendant or the prosecutor or the Attorney General is entitled to appeal. Regardless of who appeals, the appeal is brought in the Provincial Court (Criminal Division). Since it is possible, although uncommon, that the decision being appealed from was rendered by a judge of the Provincial Court (Criminal Division) because such a judge is entitled to preside at a provincial offences court trial. Accordingly, the somewhat anomalous situation may arise from time to time whereby one provincial judge presides at the appeal of a decision of a fellow judge.

As noted above in the discussion of subsection 1(1) of the Act, the word "prosecutor" was defined as meaning the Attorney General or, where the Attorney General does not intervene, the person who issues a certificate or lays an information. A defendant will have no reason to appeal an acquittal, just as ordinarily the prosecutor will have no reason to appeal a conviction. Either may wish to appeal the sentence that was imposed following conviction. The Attorney General is entitled to appeal independently of the prosecutor's wishes. Circumstances may exist from time to time where the Attorney General, but not the prosecutor, may find it appropriate to appeal and will do so by his agent.

A notice of appeal is really an application for an appeal. Subsection 118(2) provides that the form that the notice of appeal shall take is the prescribed form which is found in Regulation 820. Rule 7 of Regulation 820 provides that a notice of appeal shall be in form 201. The notice of appeal must state the reasons why the

appeal is taken. This subsection also provides that the notice of appeal shall be filed with the clerk of the Provincial Court (Criminal Division) within fifteen days after the making of the decision appealed from in accordance with the rules. Should circumstances arise where more than fifteen days have elapsed from the making of the decision appealed from, it would be necessary to resort to section 85, which empowers the court in which the proceeding is conducted to extend any time prescribed by the Act or the regulations, except the time prescribed for commencing or recommencing proceedings. To extend time to file a notice of appeal, an application would be commenced in the Provincial Court (Criminal Division) in accordance with the rule 13 of Regulation 820. It is important to adhere quite closely to the requirements of the Rules, since failure to do so may go to the jurisdiction of the Provincial Court (Criminal Division) to deal with the application and to grant the relief being sought (see R. v. Schneiderman, on unreported decision of Mr. Justice Sutherland released April 2, 1984).

After the appellant completes the notice of appeal prescribed in Regulation 820 and files it with the clerk of the Provincial Court (Criminal Division) within 15 days after the making of the decision appealed from, subrule 9(1) of the Rules requires the clerk to set a day and time for the hearing of the appeal and subsection 118(3) of the Act compels the clerk, as soon as practicable, to give a notice to the defendant and prosecutor of the time and place of the hearing of the appeal. Section 87 of the Act governs the method by which the notice of the time and place of the hearing of an appeal may be given. The clerk will usually mail the notice of time and place of hearing of appeal to the appellant. Subrule 9(4) of the Rules provides that the day set by the clerk for the hearing of the appeal must be at least 7 days after the date upon which notice of the time and place of the hearing is given. Rule 5 provides that a notice or document given or delivered by mail shall, unless the contrary is shown, be deemed to be given or delivered on the seventh day following the day on which it was mailed.

Section 119 Conduct Of Appeal

Conduct of appeal

119.—(1) Upon an appeal, the court shall give the parties an opportunity to be heard for the purpose of determining the issues and may, where the circumstances warrant it, make such inquiries as are necessary to ensure that the issues are fully and effectively defined.

Review

(2) An appeal shall be conducted by means of a review in the provincial court (criminal division) of the county or district in which the adjudication was made.

Evidence

(3) In determining a review, the court may,

(*a*) hear or rehear the recorded evidence or any part thereof and may require any party to provide a transcript of the evidence, or any part thereof, or to produce any further exhibit;

(*b*) receive the evidence of any witness whether or not the witness gave evidence at the trial;

(*c*) require the justice presiding at the trial to report in writing on any matter specified in the request; or

(*d*) receive and act upon statements of agreed facts or admissions. R.S.O. 1980, c. 400, s. 119.

This section governs the conduct of the appeal itself. The court will give the parties an opportunity to be heard for the purpose of enabling the court to determine the issues. The court is also permitted, where the circumstances warrant, to make such inquiries as are necessary to ensure that the issues are fully and effectively defined. In short, considerable leeway is afforded to the court to ensure that the appeal will be decided on the merits In this regard, it will be helpful to keep in mind the fact that the Ontario Court of Appeal adopted the following quotation from Regina v. Jamieson (1981), 64 c.c.c.(2d)550 in Regina v. Stephenson (1984), 13 c.c.c.(3d)112, namely:

> *The Provincial Offences Act was intended to establish a speedy, effecient and convenient method of dealing with offences under Acts of the Legislature and under Regulations or by-laws made under the authority of an Act of the Legislature. The Courts which heard these matters are given a wide discretion as to how they may proceed... . The Provincial Offences Act is not intended as a trap for the unskilled or unwary but rather, as already stated, as an inexpensive and efficient way of dealing with, for the most part, minor offences.*

Of particular relevance here is the guidance offered by the Stephenson decision, inasmuch as the Ontario Court of Appeal has directed that:

> "Provincial courts must be careful not to surround on their own motion this comparatively new legislation with unnecessary formalities and procedures which would frustrate the purpose of s. 119 and indeed of the Act, which is to ensure that the issues are fully, effectively and as simply as possible defined and heard. An accused should not be left with a justifiable sense of grievance that his case has not been fully and fairly heard because of some hidden unsatisfied technical formality that can have no real bearing on the result".

Unlike section 103 of the Act which specifically states the powers of the appeal court in Part III appeals, there is no equivalent provision applicable to Part I and II appeals. It is submitted that the overiding ground governing such appeals will be a consideration by the appeal court of whether the court from which the decision was appealed from could have reached that decision acting judicially. The onus is upon the appellant to demonstrate that the decision was not made in a proper judicial manner, and the appellant may find it helpful to direct the appeal court's consideration to such matters as whether the decision appealed from:

1. is unreasonable or cannot be supported by the evidence;
2. should be set aside on the ground of a wrong decision on a question or law occasioning a substantial wrong or miscarriage of justice; or
3. on any ground, there was a miscarriage of justice.

The test is not whether the appeal court has a reasonable doubt about the correctness of the conviction or dismissal, or is even satisfied that it is wrong, but instead the test is whether it was possible to reach that decision judicially. A good starting point might be to ask the question whether there was a rational basis for the making of the decision appealed from. In other words, the appeal court can set aside the trial judge's findings if

the evidence on which they are based is such that no reasonable trier of fact could possibly have made those findings if he were acting judicially.

A finding of fact by a trial judge can only be overturned if there is an entire absence of evidence to support it, which raises a question of law or if, notwithstanding that there is some evidence concerning the finding, it is nonetheless unreasonable and incapable of being supported by the evidence. The reason offered for this is that an appeal court will not interpret evidence differently and thereby substitute its opinion for that of the trial judge. An appeal court will not interfere with findings of credibility made by a trial judge unless the appeal court is satisfied that the basis for the finding of credibility is so tenuous that it would be unreasonable to base a conviction on such finding.

The appeal itself involves a review by the provincial judge of the proceedings from which the appeal was taken. Subsection 119(3) permits the court:

> (a) to hear or rehear the recorded evidence or any part thereof and may require any party to provide a transcript of the evidence, or any part thereof, or to produce any further exhibit;
>
> (b) receive the evidence of any witness whether or not the witness gave evidence at the trial;
>
> (c) require the justice presiding at the trial to report in writing on any matter specified in the request; or
>
> (d) receive and act upon statements of agreed facts or admissions.

With respect to item (b) above, the appeal court is not likely to allow evidence of a witness to be heard as a matter of course if that evidence would have been available at trial upon the use of reasonable diligence by the appellant. To routinely allow such evidence would make it attractive for the prosecutor or defendant, as the case may be, to withold evidence from the trial court thereby depriving the trial court of all the available relevant

evidence that could be tendered, notwithstanding that the existence of that evidence was known at the time of the trial. For an interpretation of s. 119(3) and (6) see R. v. Stephenson, at page 115, where Associate Chief Justice MacKinnon stated:

> *It is clear from a reading of that section that the judge on an appeal does have the discretion to hear viva voce evidence from a witness whether or not the witness gave evidence at the trial. Further... there is no requirement in the section nor in the rules passed under the Act for the parties to serve and file a notice of motion prior to the appeal, expressing the wish or intention to call additional evidence.*

Section 121 - Powers Of Court On Appeal

Powers of court on appeal

121.—(1) Upon an appeal, the court may affirm, reverse or vary the decision appealed from or where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice, direct a new trial.

New trial

(2) Where the court directs a new trial, it shall be held in the provincial offences court presided over by a justice other than the justice who tried the defendant in the first instance, but the appeal court may, with the consent of the parties to the appeal, direct that the new trial be held before the justice who tried the defendant in the first instance or before the judge who directs the new trial.

Costs

(3) Upon an appeal, the court may make an order under section 61 for the payment of costs incurred on the appeal, and subsection (3) thereof applies to the order in the same manner as to an order of a provincial offences court. R.S.O. 1980, c. 400, s. 121.

Subsection 121(1) sets out the relief which the court hearing the appeal can grant. The court may affirm, reverse or vary the decision appealed from. In addition, the court can direct a new trial where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice.

Affirming the decision appealed from involves dismissing the appeal. Reversing the decision appealed from involves allowing the appeal and entering the opposite finding from the decision made by the trial court. On an appeal from conviction, entering an

acquittal would have the effect of nullifying any sentence and would require the return of any fine to the appellant, if this had been the sentence at trial. For example, if the finding at trial was one of guilty, allowing the appeal involves entering a finding of not guilty.

The court will hear the submissions of the appellant first as to whether there were any errors which can be demonstrated in the decision appealed from. For example, if there is a total absence of an evidentiary foundation for a finding which the trial court made, there would be an error of law and, if the error was material to the decision of the trial court, the court would reverse the decision. Another example would be where the trial court made a ruling on the admissibility of evidence which was incorrect and the ruling had a material impact upon the foundation of the decision of the trial court. Refusing a request for an adjournment where a witness, who had been properly subpoenaed, has failed to appear may well be an example of a case where the discretion of the trial court to grant adjournments, pursuant to subsection 50(1), was not exercised judicially, thereby necessitating the reversing of the decision appealed from or perhaps hearing the evidence of that witness pursuant to clause 119(3)(b).

Varying the decision appealed from will always involve a sentence appeal. The fitness of the sentence is primarily what the court hearing the appeal will consider. If the court finds that the sentence imposed at trial is not a fit sentence, it will vary the sentence to one which is fit. The question of what is a fit sentence involves a consideration of the facts which constituted the offence, the character of the offender, and the usual range of sentence has been for similar situations. By keeping track of what other courts have imposed by way of sentences for parking infractions, one may be able to distinguish between a sentence which is fit and one that is not fit. It is worth noting the decision of the Supreme Court of Canada in R. v. Hill (No. 2) (1975), 25 c.c.c.(2d)6, to the effect that the power to vary a sentence includes the power to raise it, regardless of whether the Crown appealed the sentence.

The appeal court might decide to direct a new trial where, for example, a trial was held in the absence of the defendant, the defendant was convicted, and the defendant has satisfied the appellate court that he should be given an opportunity to defend himself notwithstanding his failing to appear at his trial for reasons that were out of his control, such as sudden sickness. Being able to demonstrate to the appellate court that there is an arguable defence to the charge is an illustration of a situation where the ends of justice may be satisfied only by directing a new trial.

Subsection 121(2) of the Act establishes the general rule that where a new trial is ordered, it is to be presided over by a justice other than the justice who tried the defendant in the first instance. Provided that the consent of the parties exists, this subsection permits the appellate court to override the general rule, so that the new trial will either be held before the justice that tried the defendant in the first instance or before the judge who directs the new trial.

The order for the payment of costs incurred on the appeal which subsection 121(3) permits, but does not require the appellate court to make, applies exclusively to costs incurred in respect of fees and expenses reasonably incurred by or on behalf of the witnesses not exceeding the maximum fixed by subsection 2(1) of Regulation 815 under the Act.

Section 122 - Appeal To Court Of Appeal

122.—(1) An appeal lies from the judgment of the provincial court (criminal division) to the Court of Appeal, with leave of a justice of appeal, on special grounds, upon any question of law alone in accordance with the rules made under section 123. Appeal to Court of Appeal

(2) No leave to appeal shall be granted under subsection (1) unless the justice of appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted. Grounds for leave

In order to appeal a judgment of the Provincial Court (Criminal Division) rendered upon an appeal under section 118 of the Act to the Court of Appeal, permission of a justice of the Court of Appeal is required. A justice of the Court of Appeal will only grant permission (leave) to appeal on special grounds which are set out in subsection 122(2), namely that ,in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted. Public interest means something in which the public has some vital interest which affects the public in either a pecuniary or personal sense. The due administration of justice refers to the proper administration of the law. Note that subsection 122(3) provides that the decision of the justice is final.

The ground of appeal must involve a question of law alone. A wrong decision on a question of law involves decisions on the admissibility of evidence, the onus of proof, the availability or nature of defences, and the construction of the statute or by-law under consideration. If a justice rules that there is no evidence on a particular point, that decision raises a question of law. A directed verdict involves a finding of no evidence in at least one essential element of the charge, and therefore raises a question of law alone. A reasonable doubt based upon conjecture rather than evidence, in that there was no evidence to support the reasonable doubt, raises a question of law. If a trial justice fails to draw the correct legal inference from facts found by him or her, a question of law arises. If guilt depends upon the legal effect of facts found, questions of law are raised. If a finding of fact is influenced by an incorrect appreciation of the law, then a question of law arises. Note that the credibility of a witness is a question of fact. Whether a certain class of conduct falls within an offence-creating provision gives rise to a question of law. If the question sought to be raised can be answered without reference to the facts of the particular case, it would likely be a question of law that has been raised.

Reference must be made to Regulation 818 under the Act which contains the Rules of Practice and Procedure on Appeals in the Court of Appeal under The Provincial Offences Act. Subrule 6 provides that an applicant for leave to appeal shall give notice of motion within 15 days after the date of the judgment sought to be appealed from. These Rules are far more technical than those applicable to appeals in the Provincial Court (Criminal Division) and must be strictly adhered to.

Although not expressly provided for in the Provincial Offences Act, an appeal, with leave, lies to the Supreme Court of Canada from a decision of our Court of Appeal pursuant to the federal Supreme Court Act. Since subsection 122(4) provides that no appeal or review lies from a decision on a motion for leave to appeal under subsection 122(1), it follows that the decision from which leave to appeal to the Court of Appeal is sought is final where leave to appeal is refused.

PART IX

COMMENCEMENT AND TRANSITION

Sections 146 to 149. Application of POA Part II

146.—(1) This Act, except Parts I and II, applies to offences in respect of which proceedings are commenced after the 31st day of March, 1980. Application

(2) Part I applies to offences occurring after the 31st day of March, 1980. Idem, Part I

(3) Part II applies to offences occurring after that Part comes into force. R.S.O. 1980, c. 400, s. 146. Idem, Part II

147. Part II does not come into force until a day to be named by proclamation of the Lieutenant Governor. R.S.O. 1980, c. 400, s. 147. Proclamation of Part II

148. *The Summary Convictions Act*, being chapter 450 of the Revised Statutes of Ontario, 1970, continues to apply in respect of offences to which this Act does not apply under section 146. R.S.O. 1980, c. 400, s. 148. Application of R.S.O. 1970, c. 450

149. *The Summary Convictions Act, being chapter 450 of the Revised Statutes of Ontario, 1970, continues to apply in respect of parking infractions as defined in section 14 until Part II comes into force or, in the case of parking infractions under municipal by-laws, until Part II applies in the municipality".*

These four sections may conveniently be discussed together, since they are closely inter-related in setting forth the manner in which Part II will become applicable to parking infractions under both provincial legislation and the by-laws of the several hundred municipalities in the Province.

Subsection 146(1) sets out the general rule that, except for Parts I and II, the Provincial Offences Act has applied to all offences in respect of which proceedings were commenced after March 31, 1980. Accordingly, Part III of the Act has been available since that date for the commencement of proceedings in respect of any provincial offence, including parking infractions.

This fact was recognized by the Ontario Court of Appeal in the unreported case of R. v Cornell (1983), in which it was decided that either the procedures under the Summary Convictions Act or Part III of the POA could be used to commence a prosecution in respect of parking infractions. However, because service by regular mail is not generally available under Part III of the POA, and because there is no provision authorizing payment out-of-court, Part III has been used very rarely. Until Part II of the Act becomes applicable to a municipality's parking by-laws, it will usually be more advantageous to continue to use the procedures under the Summary Convictions Act.

Subsection 146(3) states that Part II applies to offences which occur after Part II comes into force. Because of the requirement that the PIN be served "at the time of the alleged infraction", pursuant to subsections 16(3) and 16 (4), it is of course not possible for the issuing provincial offences officer to serve the operator or owner a day after, or even several hours after, the alleged infraction has occurred. Therefore, for offences which occur prior to the date on which Part II comes into force in a Municipality, proceedings will have to be commenced under the Summary Convictions Act (or possibly under Part III of the POA).

Accordingly, for a period the two different types of procedure will be operating simultaneously, until all proceedings under the Summary Convictions Act are ultimately disposed of, either by conviction, dismissal, or withdrawal. In fact, because of the delays arising from the need to serve summonses under the Summary Convictions Act, it is likely that many trials requested under Part II will be held before trials under the old procedures arising from infractions which occurred long before Part II came into force in the municipality.

Section 147 states that Part II does not come into force until a day to be named by proclamation of the Lieutenant Governor. The date which has been proposed for proclamation is September 1, 1987.

Therefore, as of that date, Part II will apply immediately to all parking infractions which are contained in statutes such as the Highway Traffic Act, or in regulations made under such statutes. By virtue of section 15, which is discussed above, Part II will not apply to parking infractions under municipal by-laws until a date two years after September 1, 1987, unless a municipality has passed a by-law declaring that Part II applies on an earlier date, and has obtained the approval of the Lieutenant Governor in Council.

Section 148 confirms that the Summary Convictions Act will continue to apply to all offences, including parking infractions, to which the POA does not apply pursuant to section 146. In essence, this means that the Summary Convictions Act will apply to all parking infractions occurring before Part II comes into force in a municipality, although, as noted above, this provision does not exclude the application of Part III of the POA to such offences.

Section 149 was added to the Act in 1983 to clarify the intention that, even though Part III of the POA has applied to parking infractions since 1980, this did not exclude the continuing applicability of the Summary Convictions Act, which, as noted above, has certain advantages in comparison with the Part III procedures, where parking infractions are concerned.

Section 149 was further amended in 1986 to make it clear that the Summary Convictions Act will not cease to apply to all parking infractions as of the date when Part II comes into force, that is, September 1, 1987, but will continue to apply to parking infractions under municipal by-laws until Part II applies in the municipality. As noted above, this will either be September 1, 1989, or an earlier date, if the appropriate by-law has been passed by the municipality and approved under subsection 15(2).

DESIGNATIONS

Ontario

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ureau du
inistre

Ministry of the Solicitor General

Ministère du Solliciteur général

25 Grosvenor Street
Toronto, Ontario
M7A 1Y6

25, Rue Grosvenor
Toronto (Ontario)
M7A 1Y6

Telephone/Téléphone:
(416) 965-2021

Pursuant to subsection 1(2) of the Provincial Offences Act, R.S.O. 1980, c.400, I hereby designate,

all persons who are appointed as municipal law enforcement officers under section 70 of the Police Act, R.S.O. 1980, c.381,

as Provincial Offences Officers for the purposes of all parking infractions (within the meaning of Part II of the Provincial Offences Act) under by-laws of the municipality.

Dated at Toronto this 21 day of August, 1987.

Ken Keyes

Ken Keyes
Solicitor General

Ontario

Employees of Municipalities

Office of the Minister

Ministry of the Solicitor General

25 Grosvenor Street
Toronto Ontario
M7A 1Y6
416 965-2021

Pursuant to subsection 1(2) of the Provincial Offences Act, R.S.O. 1980, c.400, I hereby designate all employees of municipalities and boards of commissioners of police whose duties include the enforcement of by-laws, as Provincial Offences Officers for the purposes of all by-law offences.

Dated at Toronto this 30th day of July, 1984.

George W. Taylor, Q.C.
Solicitor General

Ontario

University Police

Pursuant to subsection 2 of section 1 of The Provincial Offences Act, 1979, being chapter 4, I hereby designate all persons who are employed by a University and appointed as special constables under section 67 of The Police Act, R.S.O. 1970, chapter 351, as Provincial Offences Officers for the purposes of all offences.

Dated at Toronto this 14th day of March, 1980.

SOLICITOR GENERAL

Ontario

Civilian Member
of Police Forces

Ministry of the
Solicitor
General

25 Grosvenor Str
Toronto Ontario
M7A 1Y6
416 965-2021

Pursuant to subsection 2 of section 1 of The Provincial Offences Act, 1979, being chapter 4, I hereby designate all civilian members of police forces who are appointed as special constables under section 67 of The Police Act, R.S.O. 1970, chapter 351, as Provincial Offences Officers for the purposes of all offences.

Dated at Toronto this 20th day of February, 1980

SOLICITOR GENERAL

Police Cadets

Office of the Minister

Ministry of the Solicitor General

25 Grosvenor Street
Toronto Ontario
M7A 1Y6
416 965-2021

Pursuant to subsection 2 of section 1 of The Provincial Offences Act, 1979, being chapter 4, I hereby designate all persons who are appointed as police cadets under section 71 of The Police Act, R.S.O. 1970, chapter 351, as Provincial Offences Officers for the purposes of all offences.

Dated at Toronto this 20th day of February, 1980

SOLICITOR GENERAL

Ontario

Office of the Minister

Ministry of the Solicitor General

25 Grosvenor Street
Toronto, Ontario
M7A 1Y6

Bureau du ministre

Ministère du Solliciteur général

25, Rue Grosvenor
Toronto (Ontario)
M7A 1Y6

Telephone/Téléphone:
(416) 965-2021

Persons Appointed as Municipal Law Enforcement Officers

Pursuant to subsection 1(2) of the Provincial Offences Act, R.S.O. 1980, c.400, I hereby designate,

all persons who are appointed as municipal law enforcement officers under section 70 of the Police Act, R.S.O. 1980, c.381,

as Provincial Offences Officers for the purposes of all parking infractions (within the meaning of Part II of the Provincial Offences Act) under by-laws of the municipality.

Dated at Toronto this 21 day of August, 1987.

Ken Keyes

Ken Keyes
Solicitor General

APPENDIX 2

FORMS

PROVINCIAL OFFENCES ACT

O. Reg. 428/87.
Parking Infractions.
Made—July 16th, 1987.
Filed—July 21st, 1987.

REGULATION MADE UNDER THE PROVINCIAL OFFENCES ACT

PARKING INFRACTIONS

1. A certificate of parking infraction shall be in Form P-101. O. Reg. 428/87, s. 1.

2. A parking infraction notice shall be in Form P-102. O. Reg. 428/87, s. 2.

3. A notice of trial under Part II of the Act shall be in Form 104 of Regulation 817 of Revised Regulations of Ontario, 1980. O. Reg. 428/87, s. 3.

4. Forms referred to in this Regulation may be in French or English or in French and English. O. Reg. 428/87, s. 4.

5. A certificate of parking infraction or a parking infraction notice,

(a) may set out more than one infraction so long as the infraction with which a person is charged is clearly indicated on the certificate or notice by a check-mark, an "x", a punch hole or other means;

(b) may set out information related to the voluntary payment of penalties under by-laws passed under an Act that authorizes such by-laws. O. Reg. 428/87, s. 5.

6. The words or expressions set out in Column 1 of a Schedule may be used in a certificate of parking infraction or parking infraction notice to designate the offence described in the provision set out opposite thereto in Column 2 of the Schedule under the Act or regulation set out in the heading to the Schedule. O. Reg. 428/87, s. 6.

7. This Regulation comes into force on the day that Part II of the Act comes into force.

CERTIFICATE OF PARKING INFRACTION
PROCÈS-VERBAL D'INFRACTION DE STATIONNEMENT
Form/Formule P-101

Provincial Offences Court
Province of Ontario

Provincial Offences Act
Loi sur les infractions provinciales

Cour des infractions provinciales
Province de l'Ontario

000001

IT IS ALLEGED THAT ON THE DATE SHOWN THE OWNER (OR OPERATOR) OF THE VEHICLE UPON WHICH WAS DISPLAYED THE NUMBER PLATE DESCRIBED BELOW COMMITTED THE FOLLOWING PARKING INFRACTION:

IL EST PRÉTENDU QU'À LA DATE INDIQUÉE LE PROPRIÉTAIRE (OU L'UTILISATEUR) DU VÉHICULE SUR LEQUEL ÉTAIT APPOSÉE LA PLAQUE D'IMMATRICULATION DÉCRITE CI-DESSOUS A COMMIS L'INFRACTION DE STATIONNEMENT SUIVANTE:

Date: _____ Time: _____
Heures:

At: _____
Lieu:

Plate Number: _____ Province: _____
Plaque d'immatriculation:

Offence: _____ Set Fine: _____
Infraction: Amende déterminée:

I believe from my personal knowledge and certify that the parking infraction described above was committed and that I:

À ma connaissance directe, je crois et certifie que l'infraction de stationnement décrite ci-dessus a été commise et que j'ai:

A. served a parking infraction notice on the owner of the vehicle identified therein by affixing it to the vehicle in a conspicuous place at the time of the alleged infraction. ☐

A. signifié un avis d'infraction de stationnement au propriétaire du véhicule qui y est identifié en apposant cet avis sur ce véhicule à un endroit bien en vue au moment de la prétendue infraction;

B. served a parking infraction notice on the owner (or operator) of the vehicle identified therein by delivering it personally to the person having care and control (or operator) of the vehicle at the time of the alleged infraction. ☐

B. signifié un avis d'infraction de stationnement au propriétaire (ou à l'utilisateur) du véhicule qui y est identifié en remettant cet avis personnellement à la personne ayant la garde et le contrôle (ou à l'utilisateur) du véhicule au moment de la prétendue infraction.

IF A TRIAL IS REQUESTED, IT WILL BE HELD AT THE PROVINCIAL
SI UN PROCÈS EST DEMANDÉ, IL SE TIENDRA À LA COUR DES IN-

OFFENCES COURT AT: _____
FRACTIONS PROVINCIALES AU:

_____ Officer No. _____ Unit _____
Signature of issuing Provincial Offences Officer
Signature de l'agent des infractions provinciales
Agent nº Poste

(Complete only if operator is charged)
(Ne remplir que si l'utilisateur est inculpé)

Name of operator: _____
Nom de l'utilisateur:

Address: _____
Adresse: _____

Driver's Licence No.: _____
N° du permis de conduire:

Birth Date: _____ Sex: _____
Date de naissance: Sexe:

O. Reg. 428/87, Form P-101.

PARKING INFRACTION NOTICE
AVIS D'INFRACTION DE STATIONNEMENT
Form/Formule P-102

Provincial Offences Act
Loi sur les infractions provinciales

000001

IT IS ALLEGED THAT ON THE DATE SHOWN THE OWNER (OR OPERATOR) OF THE VEHICLE UPON WHICH WAS DISPLAYED THE NUMBER PLATE DESCRIBED BELOW COMMITTED THE FOLLOWING PARKING INFRACTION:
IL EST PRÉTENDU QU'À LA DATE INDIQUÉE, LE PROPRIÉTAIRE (OU L'UTILISATEUR) DU VÉHICULE SUR LEQUEL ÉTAIT APPOSÉE LA PLAQUE D'IMMATRICULATION DÉCRITE CI-DESSOUS, A COMMIS L'INFRACTION DE STATIONNEMENT SUIVANTE:

Date: _____ Time: _____
Heures:

At: _____
Lieu:

Plate Number: _____ Province: _____
Plaque d'immatriculation:

Offence: _____ Set Fine: _____
Infraction: Amende déterminée:

_____

_____

Voluntary Payment Option (if applicable): _____
Option de paiement volontaire (le cas échéant):

_____

NOTICE AVIS

_____

(Insert explanation of voluntary payment option, if applicable)
(Indiquez les renseignements relatifs à l'option de paiement volontaire, le cas échéant)

Within 15 days of the date noted above, you may choose one of the options on the back of this Form. If you do not pay the set fine shown above or plead not guilty, a conviction may be entered against you without further notice. On conviction you will be required to pay the set fine plus court costs. An administrative fee is payable if the fine goes into default.

Dans les 15 jours de la date indiquée ci-dessus, vous pouvez choisir l'une des options offertes au verso de la présente formule. Si vous n'acquittez pas le montant de l'amende déterminée ci-dessus ou ne plaidez non coupable, une déclaration de culpabilité peut être inscrite contre vous, sans préavis. Lors de la déclaration de culpabilité, vous serez tenu(e) de verser le montant de l'amende déterminée ainsi que les dépens. Des frais d'administration sont payables après que le paiement de l'amende est en défaut.

IF YOU PLEAD NOT GUILTY, THE TRIAL WILL BE HELD AT THE
SI VOUS PLAIDEZ NON COUPABLE, LE PROCÈS SE TIENDRA À LA
PROVINCIAL OFFENCES COURT AT:
COUR DES INFRACTIONS PROVINCIALES AU:

_____

_____ Officer No. _____ Unit _____
Signature of Issuing Provincial Offences Officer
Signature de l'agent des infractions provinciales
Agent nº Poste

IMPORTANT – PLEASE READ CAREFULLY
NOTEZ BIEN – VEUILLEZ LIRE ATTENTIVEMENT CE QUI SUIT

WITHIN 15 DAYS OF THE DATE OF THE ALLEGED PARKING INFRACTION, you may choose one of the following options. Complete the selected option and sign where indicated. Deliver this parking infraction notice (and payment where applicable) to the place indicated under the option which you have selected. All enquiries concerning this alleged infraction should be made to (address and telephone number of police force or other agency that issued Parking Infraction Notice).

DANS LES 15 JOURS DE LA DATE DE LA PRÉTENDUE INFRACTION DE STATIONNEMENT, vous pouvez choisir l'une des options suivantes. Remplissez la partie de la formule qui correspond à votre option et signez à l'endroit indiqué. Remettez cet avis d'infraction de stationnement (et votre paiement, le cas échéant) à l'endroit indiqué sous la rubrique de l'option que vous avez choisie. Tous renseignements concernant cette prétendue infraction doivent être demandés au (adresse et numéro de téléphone du corps de police ou d'une autre agence qui a délivré l'avis d'infraction de stationnement).

DEFENDANT'S OPTIONS – CHOOSE ONE ONLY

1. VOLUNTARY PAYMENT:
I do not wish to dispute the charge and I enclose the amount of the set fine indicated on the front of this notice.

OPTIONS DU DÉFENDEUR – N'EN CHOISIR QU'UNE

1. PAIEMENT VOLONTAIRE
Je ne désire pas contester l'accusation et joins à la présente le montant de l'amende déterminée qui est indiqué au recto de cet avis.

_____
(signature)

NOTE CAREFULLY THE TIME ALLOWED FOR PAYMENT. WRITE THE NUMBER OF THE PARKING INFRACTION NOTICE ON THE FRONT OF YOUR CHEQUE OR MONEY ORDER AND MAKE IT PAYABLE TO:

NOTEZ ATTENTIVEMENT LE DÉLAI IMPARTI POUR LE PAIEMENT. INSCRIVEZ LE NUMÉRO DE L'AVIS D'INFRACTION DE STATIONNEMENT AU RECTO DE VOTRE CHÈQUE OU DU MANDAT QUE VOUS FAITES À L'ORDRE DE:

_____

Deliver to: _____
Remettez à:

2. NOT GUILTY PLEA:
I plead not guilty. I will appear at the time and date set by the court for my trial. My mailing address is as shown below.

2. PLAIDOYER DE NON-CULPABILITÉ
Je plaide non coupable. Je me présenterai à la date et à l'heure choisies par le tribunal pour mon procès. Mon adresse postale est celle indiquée ci-dessous.

_____
(signature)

Name: _____
Nom:

Address: _____
Adresse:

_____ Postal Code: _____
Code postal:

Deliver to: _____
Remettez à:

☐ As a person who speaks the French language, I wish the trial to be held before a justice who speaks both English and French as provided by law.
Je parle français et je désire que le procès ait lieu devant un juge qui parle anglais et français tel que la loi m'en donne le droit.

3. (Insert information re: Voluntary payment option if applicable)
(Indiquez les renseignements relatifs à l'option de paiement volontaire, le cas échéant)

_____

_____

NOTICE
Ontario Motorists

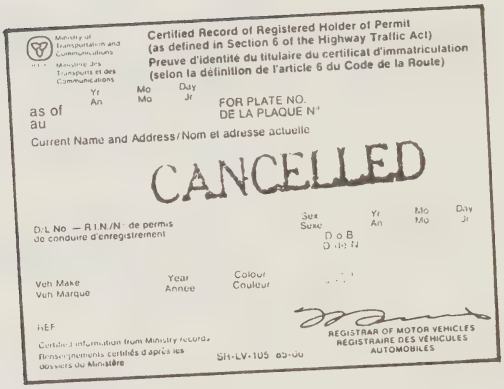
Failure to pay the fine imposed upon conviction will result in an order that your Ontario vehicle Permit not be renewed and that no new permit be issued to you until the fine and all court costs and fees have been paid.

AVIS
Automobilistes de l'Ontario

Le non-paiement de l'amende déterminée lors d'une déclaration de culpabilité donnera lieu à une ordonnance portant que votre certificat d'immatriculation de l'Ontario ne sera pas renouvelé et qu'aucun nouveau certificat d'immatriculation ne vous sera délivré jusqu'à ce que l'amende, les dépens et les frais aient été acquittés en totalité.

O. Reg. 428/87, Form P-102.

Evidence of Vehicle Ownership,
pursuant to subsection 184(3)
of the Highway Traffic Act



Ministry of Transportation and Communications
Ministère des Transports et des Communications

Certified Record of Registered Holder of Permit
(as defined in Section 6 of the Highway Traffic Act)
Preuve d'identité du titulaire du certificat d'immatriculation
(selon la définition de l'article 6 du Code de la Route)

as of / au — Yr/An Mo/Mo Day/Jr

FOR PLATE NO. / DE LA PLAQUE N°

Current Name and Address/Nom et adresse actuelle

CANCELLED

D.L No — R.I.N./N° de permis de conduire d'enregistrement

Sex / Sexe

D.o.B / D.d.N — Yr/An Mo/Mo Day/Jr

Veh Make / Veh Marque

Year / Année

Colour / Couleur

REF

Certified information from Ministry records
Renseignements certifiés d'après les dossiers du Ministère

REGISTRAR OF MOTOR VEHICLES
REGISTRAIRE DES VÉHICULES AUTOMOBILES

SR-LV-105 85-06

Provincial
Offences Court
Province of Ontario

ntario

Filing Document

Court Record

ehicle Owner:

Court Action

Date	Adjourned To	Requested By	Parties Consent

Fail to Appear ☐ Trial In Absentia
☐ Summons Ordered ☐ Warrant Ordered

Prosecutor	For Defendant
Reporter	Clerk

Pleads: ☐ Guilty ☐ Not Guilty

Finding of Court

☐ Guilty
☐ Dismissed
☐ Withdrawn
☐ Suspended Sentence
☐ Quashed

Fine
Costs
Total
Time to Pay

..... Justice

Default Fine Enforcement

☐ Order made to refuse issuance or validation of permit Sec. 70(2) POA pursuant to Section 7(3) H.T.A.

☐ Order made for Civil Enforcement pursuant to Sec. 69 P.O.A.

☐ Order made to issue Warrant of Committal pursuant to Sec. 70(3) P.O.A.

..... Justice

Conviction entered.
Set Fine Imposed - Sec. 19 P.O.A.

Day Month Year

Fine
Costs
Fees
Total

..... Justice

501 (12/86)

D - 8

Ontario

Provincial
Offences Court
Province of Ontario

Certificate Control Li

This form, properly completed, shall accompany Certificates of Offe
being filed under Section 16(1) of the Provincial Offences Act.

Prepared by (Enforcement Agency)	Date	Receipt Verified by	Date Received by Court Office

Ref. No.	C.P.I. No.	Defendant Name	Plate No.	Set Fine
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
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25				
26				
27				
28				
29				
30				

CD 602 (rev. 05/87)

Ontario

Provincial
Offences Court
Province of Ontario

Provincial Court Docket

Prepared by (Enforcement Agency)	Date	Receipt Verified by	Date Received by Court Office

Ref. No.	C.P.I. No.	Defendant Name	Plate No.	Set Fine	Costs	Total	Court Action	
							Conviction Reg.	Quashed
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
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20								
21								
22								
23								
24								
25								
26								
27								
28								
29								
30								
	Justice of the Peace		Totals	Cases				

Court Date

602 (12/86)

3. Form 104 to the said Regulation is revoked and the following substituted therefor:

Form 104/Formule 104

Provincial Offences Act
Loi sur les infractions provinciales

PROVINCIAL OFFENCES COURT
PROVINCE OF ONTARIO

NOTICE OF TRIAL UNDER SECTION 5
OR 17 OF THE PROVINCIAL OFFENCES ACT

COUR DES INFRACTIONS PROVINCIALES
PROVINCE DE L'ONTARIO

AVIS DE PROCÈS EN VERTU DES ARTICLES
5 OU 17 DE LA LOI SUR LES INFRACTIONS
PROVINCIALES

Take note that on the ..... day of ..... next at .....M,
Prenez note que le ..... prochain, à ..... heures, un procès

a trial will be held at the Provincial Offences Court at
aura lieu à la Cour des infractions provinciales au:
.....
(address/adresse)

A photocopy of your Offence Notice or the Certificate of Offence or Certificate of Parking Infraction appears on the left. This will acknowledge receipt of your Plea of Not Guilty.

Une photocopie de votre avis d'infraction, du procès-verbal d'infraction ou du procès-verbal d'infraction de stationnement figure à gauche. Ceci constitue un accusé de réception de votre plaidoyer de non-culpabilité.

Your trial will be held on the date and time noted above at the Provincial Offences Court shown. You should be prepared to proceed with your trial at that time. If you do not appear, a warrant may be issued for your arrest or the court may proceed to hear and determine the proceedings in your absence. If you are found guilty, court costs may be assessed against you in addition to any fine imposed.

Votre procès aura lieu à la date et à l'heure indiquées ci-dessus à la Cour des infractions provinciales qui est mentionnée. Vous devrez être prêt(e) pour l'instruction de votre procès à cette date. Si vous ne vous présentez pas, un mandat d'arrestation peut être décerné contre vous ou le tribunal peut procéder à l'instruction de l'instance et rendre une décision en votre absence. Si vous êtes déclaré(e) coupable, les dépens peuvent être adjugés contre vous en plus de l'amende imposée, le cas échéant.

Issued at ..... , this ..... day of ..... , 19 .....
Délivré à ..... le ..... 19 .....
.....
Clerk of the Provincial Offences Court)
(Greffier de la Cour des infractions provinciales)

Given / Remis — to defendant / au défendeur

..... — Sent by mail to defendant / envoyé au défendeur par la poste

..... — Given personally to defendant / remis au défendeur personnellement

..... — Given personally to counsel or agent for defendant / remis à l'avocat-conseil ou au mandataire du défendeur personnellement

.....
(signature of defendant or counsel or agent for defendant)
(signature du défendeur, de l'avocat-conseil ou du mandataire du défendeur)

Given / Remis — to prosecutor / au poursuivant

..... — Sent by mail to prosecutor / envoyé au poursuivant par la poste

..... — Given personally to prosecutor / remis au poursuivant personnellement

..... — Given personally to counsel or agent for prosecutor / remis a l'avocat-conseil ou au mandataire du poursuivant, personnellement

.....
(signature of prosecutor or counsel or agent for prosecutor)
(signature du poursuivant, de l'avocat-conseil ou du mandataire du poursuivant)

I certify that a Notice of Trial of which this is a copy was given to the defendant and prosecutor in the manner set out above.

Je certifie qu'un avis de procès dont la présente constitue une copie, a été remis au défendeur ainsi qu'au poursuivant de la manière énoncée ci-dessus.

by .....,
par .....

.....
(signature)

On the ..... day of ....., 19 .....
Le ..... 19 .....

O. Reg. 430/87, s. 3.

THE CORPORATION OF THE CITY OF LONDON

NOTICE OF PENDING SUMMONS

REGARDING

VEHICLE IDENTIFICATION	VIOLATION #	DATE OF VIOLATION (ON OR ABOUT)	AMOUNT OF FINE	FINAL PAYMENT DATE

THE ABOVE VEHICLE OWNED BY YOU WAS PARKED CONTRARY TO CITY OF LONDON BY-LAWS. THE ISSUED TICKET HAS NOT BEEN PAID. UNLESS PAYMENT IS RECEIVED BY THE ABOVE DATE, A SUMMONS WILL BE ISSUED WITH A $12.00 CHARGE ADDED TO THE "AMOUNT OF FINE".

MAKE CHEQUE OR MONEY ORDER PAYABLE TO "CITY TREASURER - LONDON"

AND MAIL TO: CITY HALL
P.O. BOX 5400
LONDON, ONTARIO
N6A 4L6

** PLEASE RETURN THIS NOTICE WITH YOUR PAYMENT **

IF PAYMENT HAS BEEN MADE, PLEASE CALL 661-4983

THANK YOU FOR YOUR PROMPT ATTENTION TO THIS MATTER

Sample Notice of Pending Summons

Form 102

Courts of Justice Act

AFFIDAVIT IN SUPPORT OF APPLICATION
UNDER SECTION 11 (OR SECTION 20)
OF THE PROVINCIAL OFFENCES ACT

PROVINCIAL OFFENCES COURT
PROVINCE OF ONTARIO

I, _____, of _____
(address)

_____ make oath and say as follows:

1. I was convicted on the _____ day of _____, 19____, of the offence of _____, contrary to section _____

2. I did not have the opportunity (check appropriate box)

   a. ☐ to dispute the charge

   b. ☐ to appear, or

   c. ☐ to be represented

   at a hearing for the reason that, through no fault of my own, the delivery of a necessary notice or document, namely _____

   _____

   _____
   (fill in details as to why no delivery occurred where the reason is known)

3. My conviction first came to my attention on the _____ day of _____, 19____

Sworn before me at

_____,

this _____day of

_____, 19____ _____

a _____
(Commissioner, etc.)

Note: Section 86 of the *Provincial Offences Act* provides:

Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence and on conviction is liable to a fine of not more than $1,000.

O. Reg. 519/87, s. 10, *part*.

Form 103

Courts of Justice Act

CERTIFICATE OF STRIKING OUT
CONVICTION UNDER SECTION 11
(OR SECTION 20) OF THE
PROVINCIAL OFFENCES ACT

PROVINCIAL OFFENCES COURT
PROVINCE OF ONTARIO

(Copy of Certificate of Offence or
Certificate of Parking Infraction)

I certify that the conviction entered on the_____ day of _____, 19_____, against the defendant identified, and in respect of the offence described on the certificate of offence (or certificate of parking infraction) duplicated above, was struck out by me on the _____ day of _____, 19_____, at _____

_____

_____
Provincial Judge or Justice
of the Peace

O. Reg. 519/87, s. 10, *part*.

Form 149

Courts of Justice Act

CERTIFICATE OF NON-DELIVERY OF
FINE PAYMENT AND REQUEST FOR TRIAL
UNDER SUBSECTION 19 (1a) OF THE
PROVINCIAL OFFENCES ACT

PROVINCIAL OFFENCES COURT
PROVINCE OF ONTARIO

I certify that payment of the set fine in respect of the parking infraction alleged upon the certificate of parking infraction affixed (or appended) to this form has not been made under section 18 and that a request for trial in respect of the alleged parking infraction has not been delivered under subsection 17 (1).

_____ _____
(date) (signature)

_____ Clerk of the Corporation of the _____ of
(place)
_____ (or, a person designated by the
Clerk of the Corporation of the _____
of _____)

O. Reg. 519/87, s. 11.

RULES COMMITTEE OF THE PROVINCIAL OFFENCES COURT:

F. C. HAYES
Chairman

DAVID BECK
Secretary

Dated at Toronto, this 27th day of August, 1987.

(2554)

APPENDIX 3

MODEL BY-LAW

February, 1987

PROVINCIAL OFFENCES ACT
PART II - PARKING INFRACTIONS

PROPOSED MODEL BY-LAW DECLARING THAT PART II APPLIES IN RESPECT OF PARKING INFRACTIONS UNDER BY-LAWS OF A MUNICIPALITY, PURSUANT TO SUBSECTION 15(2) OF THE PROVINCIAL OFFENCES ACT

By-law Number _____

The Corporation of the
_____ of _____

A by-law declaring Part II of the Provincial Offences Act, R.S.O. 1980, chapter 400, as amended, applicable to parking infractions under certain municipal by-laws

WHEREAS subsection 15(2) of the Provincial Offences Act, R.S.O. 1980, chapter 400, as amended, enables the Council of the municipal corporation to pass by-laws to declare that Part II of the Provincial Offences Act applies in respect of parking infractions under by-laws passed in the municipality dealing with parking;

NOW THEREFORE the Council of the Corporation of the _____ of _____ hereby ENACTS as follows:

1. Part II of the Provincial Offences Act R.S.O. 1980 chapter 400, as amended, applies in respect of all parking infractions under the following by-laws:

(see note 1)

2. This by-law comes into force and effect on _____, subject to the approval of the Lieutenant Governor in Council.

ENACTED and PASSED this day of 198

_____
Mayor, etc.

_____
Clerk

NOTES: (not to be included in the by-law)

1. The various by-law numbers of the by-laws which create parking infractions may be enumerated in section 1.

2. It is assumed that each one of the several parking by-laws will contain a general penalty provision which will be sufficient to enable the Chief Judge of the Provincial Offences Court to exercise his discretion to establish set fines at appropriate levels for the various parking infractions for which the municipality submits suggested set fines. An example is:

> "Every person who violates any provision of this by-law is upon conviction guilty of an offence and shall be liable to a fine of not more than $50, exclusive of costs".

3. It is considered that provisions in any by-law providing for the voluntary payment procedure under s.321a of the Municipal Act may be left in place, in the event that for any reason the municipality wishes in certain cases to proceed by way of "Notice of Violation", followed by proceedings under Part III of the Provincial Offences Act, rather than by way of "Parking Infraction Notice" under Part II.

4. It is not considered essential to remove all references to the Summary Convictions Act from the various parking by-laws at the time they are brought under Part II. However, this may be beneficial in order to prevent public confusion or legal arguments about which statute applies to any particular by-law on a specific date.

5. It is suggested that the by-law making Part II applicable to parking infractions under by-laws of the municipality be submitted to the Ministry of the Attorney General well in advance of the date on which it is desired to come under Part II, together with materials requesting the establishment of set fines, in order that the POA Implementation office may review the materials and forward them to the Office of the Chief Judge for his consideration. Sufficient time should be allowed for printing of the municipality's new supplies of forms under Part II, following receipt of the order establishing set fines.

APPENDIX 4

RULES

REGULATION 809

under the Courts of Justice Act, 1984

RULES OF PRACTICE AND PROCEDURE OF THE PROVINCIAL OFFENCES COURTS

1. In these rules, "Act" means the *Provincial Offences Act*. R.R.O. 1980, Reg. 809, r. 1.

2. These rules apply to proceedings under the Act and a word or term in the Act has the same meaning in these rules as it has in the Act. R.R.O. 1980, Reg. 809, r. 2.

3. These rules shall be construed liberally so as to obtain as expeditious a conclusion of every proceeding as is consistent with a just determination of the proceeding. R.R.O. 1980, Reg. 809, r. 3.

4. The following apply to the calculation of a period of time prescribed by the Act, these rules or an order of a court:

1. The time shall be calculated by excluding the first day and including the last day of the period.
2. Where a period of less than six days is prescribed, a Saturday or holiday shall not be reckoned.
3. Where the last day of the period of time falls on a Saturday or a holiday, the day next following that is not a Saturday or a holiday shall be deemed to be the last day of the period.
4. Where the days are expressed to be clear days or where the term "at least" is added, the time shall be calculated by excluding both the first day and the last day of the period. R.R.O. 1980, Reg. 809, r. 4.

5. A notice or document given or delivered by mail shall, unless the contrary is shown, be deemed to be given or delivered on the seventh day following the day on which it was mailed. R.R.O. 1980, Reg. 809, r. 5.

6. For the purpose of proceedings under Part I or II of the Act, the amount of fine set by the court for an offence is such amount as may be set by the chief judge of the provincial offences courts. R.R.O. 1980, Reg. 809, r. 6.

7.—(1) An application provided for by the Act or these rules shall be commenced by notice of motion.

(2) There shall be at least three days between the giving of notice of motion and the day for hearing the application.

(3) An applicant shall file notice of motion at least two days before the day for hearing the application.

(4) Evidence on an application may be given,

(*a*) by affidavit;

(*b*) with the permission of the court, orally; or

(*c*) in the form of a transcript of the examination of a witness.

(5) Upon the hearing of an application and whether or not other evidence is given on the application, the justice may receive and base his decision upon information he considers credible or trustworthy in the circumstances.

(6) An application may be heard without notice,

(*a*) on consent; or

(*b*) where, having regard to the subject-matter or the circumstances of the application, it would not be unjust to hear the application without notice.

(7) Subrules (1) to (4) do not apply in respect of an application under section 67 of the Act. R.R.O. 1980, Reg. 809, r. 7.

8.—(1) A provincial offences officer who files a certificate of offence in the office of a court shall file with the certificate of offence a certificate control list, in the form that shall be supplied by the clerk of the court, with the certificate recorded on the list.

(2) A single certificate control list may be filed with as many certificates of offence as can be accounted for on the certificate control list.

(3) The clerk of the court shall endorse on the certificate control list a receipt for the certificates of offence filed with the certificate control list.

(4) The clerk of the court shall, on request, give a copy of the receipt to the provincial offences officer who filed the certificate control list. R.R.O. 1980, Reg. 809, r. 8.

9. The clerk of a court shall not accept for filing a certificate of offence more than seven days after the day on which the offence notice or summons was served unless the time is extended by the court. R.R.O. 1980, Reg. 809, r. 9.

10. The clerk of the court shall endorse the date of filing on every certificate of offence filed in the office of the court. R.R.O. 1980, Reg. 809, r. 10.

11.—(1) Upon the delivery of an offence notice with a signed not guilty plea to the office of the court

specified in the notice, the clerk of the court shall set a day and time for trial.

(2) The clerk of the court shall give notice of the trial to the defendant and prosecutor at least seven days before the day set for trial.

(3) A certificate as to the giving of a notice of trial endorsed on the notice of trial by the clerk of the court shall be received in evidence and, in the absence of evidence to the contrary, is proof of the giving of the notice stated in the certificate. R.R.O. 1980, Reg. 809, r. 11.

12.—(1) A defendant who attends at the time and place specified in an offence notice for the purpose of proceeding under subsection 7 (1) of the Act shall give the offence notice to the court specified in the notice.

(2) The court shall give to a defendant a receipt for an offence notice delivered to the court in accordance with subrule (1). R.R.O. 1980, Reg. 809, r. 12.

13. The following matters shall be dealt with only in court:

1. Quashing a proceeding, except under section 9 of the Act.

2. Amending an information or certificate of offence. R.R.O. 1980, Reg. 809, r. 13.

14. A justice shall not quash a proceeding or amend a certificate of offence in respect of a defendant who is appearing before the justice for the purposes of section 7 of the Act. R.R.O. 1980, Reg. 809, r. 14.

15. Where a defendant appears before a justice under section 7 of the Act and it appears that the certificate of offence has not been filed in the office of the court, the justice may receive the plea of guilty and submissions of the defendant and specify the amount of fine he will impose and the time he will allow for payment when the certificate of offence is filed and a conviction is entered. R.R.O. 1980, Reg. 809, r. 15.

16. Where a defendant appears before a justice under section 7 of the Act and the justice is of the opinion that the certificate of offence is so defective on its face that it cannot be cured under section 34, 35, 36 or 37 of the Act, the justice shall refuse to accept the plea, shall inform the defendant of the reason for the refusal and shall inform the defendant of the provisions of section 5 of the Act. R.R.O. 1980, Reg. 809, r. 16.

17. Money paid to the office of a court by a defendant who was served with an offence notice shall be refunded to the defendant if the certificate of offence is not filed in the office of the court named therein within seven days after the day on which the offence notice was served or within such extension of time as may be granted by the court. R.R.O. 1980, Reg. 809, r. 17.

18. Every justice shall keep a daily docket, in the form that shall be supplied by the clerk of the court, on which the justice shall record the disposition of every proceeding or matter under Part I or II of the Act dealt with by him. R.R.O. 1980, Reg. 809, r. 18.

19.—(1) A justice who,

(*a*) acting under section 7 of the Act, imposes a fine that is less than the set fine and less than the minimum fine prescribed for the offence by the provision that creates the penalty, or

(*b*) acting under section 9 of the Act, quashes a proceeding,

shall endorse on the certificate of offence or the information, as the case may be, the decision and reasons.

(2) In addition to recording the decision on a daily docket, a justice referred to in subrule (1) shall complete a separate report, in the form that shall be supplied by the clerk of the court, of the decision and the reasons for the decision.

(3) A completed report mentioned in subrule (2) forms part of and shall be kept with the records of the court maintained by the clerk of the court. R.R.O. 1980, Reg. 809, r. 19.

20. Upon payment of a fine, the clerk of the court shall, upon request, issue to the defendant a receipt for the payment. R.R.O. 1980, Reg. 809, r. 20.

20*a*.—(1) Where a person is in default of payment of all or part of a fine, the clerk of the court may present to a justice a statement certified by the clerk setting out,

(*a*) that the person was convicted of an offence prosecuted under the Act;

(*b*) the amount of the fine imposed, including costs, and the amount unpaid as of the date of the statement;

(*c*) that no order has been made under clause 71 (4) (*a*) of the Act prohibiting the issuance of a warrant of committal;

(*d*) that the court has not received notice of an order made upon appeal relieving against payment of the fine or staying proceedings;

(*e*) whether or not an order has been made under clause 70 (2) (*a*) of the Act to suspend, not renew or not issue a permit, licence, registration or privilege, and, if such an order has been made, the date of the order;

(*f*) whether or not a direction has been issued under clause 70 (2) (*b*) of the Act to proceed with civil enforcement, and, if such a direction has been issued, the date of completion of the certificate of default and the date on which the certificate of default was filed in a court of competent jurisdiction;

(g) that the person has been given fifteen days notice of intent to issue a warrant for committal of the person; and

(h) whether or not the person has appeared in response to the notice of intent or has requested an opportunity to be heard, and, if the person has done so, whether or not the person has been given an extension of time for payment of the fine.

(2) A statement certified by the clerk of the court under subsection (1) is and shall be kept as a record of the court. O. Reg. 651/82, s. 1.

21. A justice who, under subsection 70 (3) of the Act, issues a warrant of committal, shall enter in the records of the court the reasons for the issuance of the warrant. R.R.O. 1980, Reg. 809, r. 21.

22. Where a person is sentenced to a term of imprisonment and a warrant of committal is issued for custody of the person to commence, under subsection 64 (2) of the Act, on a day that is later than the day of sentencing, the clerk of the court, as soon as practicable after the warrant is issued,

(a) shall cause to be given or delivered to the person a notice stating the warrant has been issued and specifying the place where and the time within which the person is to surrender into custody; and

(b) shall deliver the warrant to the individual who is to accept the custody of the person. R.R.O. 1980, Reg. 809, r. 22.

23.—(1) The following oath is prescribed for the purpose of subsection 84 (1) of the Act:

I, ...
do swear (or solemnly affirm) that I am capable of translating and will translate to the best of my skill and ability from

..... to ..... and
(name of language) (name of language)

from ..... to .....
(name of language) (name of language)

in this proceeding.

So Help Me God. (Omit this line in an affirmation).

(2) The following oath is prescribed for the purpose of subsection 84 (2) of the Act:

I, ...
do swear (or solemnly affirm) that I am capable of translating and will translate to the best of my skill and ability from

..... to ..... and
(name of language) (name of language)

from ..... to .....
(name of language) (name of language)

in proceedings under the *Provincial Offences Act*.

So Help Me God. (Omit this line in an affirmation).

R.R.O. 1980, Reg. 809, r. 23.

24. The clerk of a court who receives notice from the clerk of an appeal court that a notice of appeal has been filed shall transmit the order appealed from and transmit or transfer custody of all other material referred to in section 99 of the Act to the clerk of the appeal court within ten days after receiving the notice. R.R.O. 1980, Reg. 809, r. 24.

25. Where a transcript of evidence at trial, including reasons for judgment or sentence, is requested from the clerk of a court for the purpose of an appeal, the clerk,

(a) shall complete and deliver to the person making the request a certificate of preparation of transcript in Form 302 of Regulation 819 of Revised Regulations of Ontario, 1980;

(b) shall ensure that the transcript is prepared with reasonable diligence;

(c) shall obtain and attach to the transcript a certificate by the person who prepared the transcript that it is an accurate transcription of the evidence and reasons recorded at trial; and

(d) shall notify,

(i) the appellant,

(ii) the clerk of the court in which the appeal is taken, and

(iii) if the Crown Attorney is not the appellant or respondent, the Crown Attorney, when the transcript has been completed. R.R.O. 1980, Reg. 809, r. 25.

26. The clerk of a court who receives notice of the decision of an appeal court on an appeal from a decision of the court shall give the notice and any written reasons or endorsement included with the notice to the justice whose decision was appealed from. R.R.O. 1980, Reg. 809, r. 26.

27.—(1) Where, upon an appeal, the appeal court has directed a new trial, upon application by the prosecutor without notice a justice shall issue a summons to the defendant.

(2) Where a justice issues a summons under subrule (1), the clerk of the court shall, as soon as is practicable, give notice to the prosecutor of the time and place of the trial. R.R.O. 1980, Reg. 809, r. 27.

28.—(1) An affidavit of service of an offence notice or summons shall be in Form 101.

(2) An affidavit in support of an application under section 11 of the Act shall be in Form 102.

(3) A certificate under section 11 of the Act shall be in Form 103.

(4) A summons under section 23 of the Act shall be in Form 104.

(5) An information under section 24 of the Act shall be in Form 105.

(6) A summons under section 25 of the Act shall be in Form 106.

(7) A warrant for arrest under section 25 of the Act shall be in Form 107.

(8) A notice of cancellation of summons under section 25 of the Act shall be in Form 108.

(9) A subpoena under section 40 of the Act shall be in Form 109.

(10) A warrant under subsection 41 (1) of the Act shall be in Form 110.

(11) A warrant under subsection 41 (2) of the Act shall be in Form 111.

(12) A recognizance by witness under section 41 of the Act shall be in Form 112.

(13) A warrant under subsection 41 (10) of the Act shall be in Form 113.

(14) An order under subsection 41 (6) of the Act shall be in Form 114.

(15) An order under section 42 of the Act shall be in Form 115.

(16) A certificate under section 43 of the Act shall be in Form 116.

(17) An order to attend for examination under section 45 of the Act shall be in Form 117.

(18) A warrant to take a defendant into custody under section 45 of the Act shall be in Form 118.

(19) A certificate of execution of a warrant issued under subsection 45 (6) of the Act shall be in Form 119.

(20) A summons under section 52 of the Act shall be in Form 120.

(21) An order of dismissal under section 54 of the Act shall be in Form 121.

(22) A summons to a defendant under section 55 of the Act shall be in Form 122.

(23) A warrant under section 55 of the Act shall be in Form 123.

(24) A warrant under subsection 64 (2) of the Act shall be in Form 124.

(25) An application under subsection 67 (6) of the Act shall be in Form 125.

(26) An order under subsection 67 (6) of the Act extending time for payment of a fine shall be in Form 126.

(27) A certificate of default under section 69 of the Act shall be in Form 127.

(28) A notice of intent to issue a warrant under section 70 of the Act shall be in Form 128.

(29) A warrant of committal under subsection 70 (3) of the Act shall be in Form 129.

(30) A warrant of committal under subsection 70 (4) of the Act shall be in Form 130.

(31) An undertaking by a defendant to appear shall be in Form 131.

(32) A probation order under section 72 of the Act shall be in Form 132.

(33) A summons to a defendant where a new trial is ordered by an appeal court shall be in Form 133.

(34) A recognizance under subsection 133 (2) of the Act shall be in Form 134.

(35) A recognizance under section 134 of the Act shall be in Form 135.

(36) An order for detention of a defendant under section 134 of the Act shall be in Form 136.

(37) A warrant under section 139 of the Act for the arrest of a defendant shall be in Form 137.

(38) A certificate of arrest under section 139 of the Act shall be in Form 138.

(39) A certificate under subsection 141 (1) of the Act as to failure to comply with a condition of a recognizance shall be in Form 139.

(40) An information to obtain a search warrant under section 142 of the Act shall be in Form 140

(41) A search warrant under section 142 of the Act shall be in Form 141.

(42) A statement under section 145 of the Act shall be in Form 142.

(43) A warrant remanding,

(*a*) a witness under subsection 41 (6) of the Act; or

(*b*) a defendant under subsection 134 (4) of the Act,

shall be in Form 143.

(44) An order for the release of a defendant under subsection 134 (2) of the Act shall be in Form 144.

(45) An order for the release of a person in custody under subsection 41 (9) of the Act shall be in Form 145.

(46) A warrant of committal the form of which is not otherwise specified in these rules shall be in Form 146.

(47) An order the form of which is not otherwise specified in these rules shall be in Form 147.

(48) A recognizance under subsection 133 (3) of the Act shall be in Form 148. R.R.O. 1980, Reg. 809, r. 28.

COURTS OF JUSTICE ACT, 1984

O. Reg. 519/87.
Rules of Practice and Procedure of the Provincial Offences Courts.
Made—August 27th, 1987.
Approved—September 2nd, 1987.
Filed—September 3rd, 1987.

REGULATION TO AMEND REGULATION 809 OF REVISED REGULATIONS OF ONTARIO, 1980 MADE UNDER THE COURTS OF JUSTICE ACT, 1984

1. Regulation 809 of Revised Regulations of Ontario, 1980 is amended by adding thereto the following rule:

7a.—(1) Where a certificate of parking infraction has been issued in respect of a parking infraction under a municipal by-law without a reference to the number of the by-law that creates the offence, the number of the by-law shall be affixed or appended to the certificate when it is filed in the office of the court.

(2) Where a certificate of parking infraction has been issued alleging a parking infraction against the defendant as owner of a vehicle, evidence of the ownership of the vehicle shall be affixed or appended to the certificate when it is filed in the office of the court.

(3) A certificate of parking infraction filed in the office of the court shall be affixed or appended to the filing document approved by the clerk of the court. O. Reg. 519/87, s. 1.

2.—(1) Rule 8 of the said Regulation is amended by adding thereto the following subrules:

(1*a*) A provincial offences officer who files a certificate of parking infraction in the office of a court shall file with it a certificate control list in the form approved by the clerk of the court, with the certificate recorded on the list. O. Reg. 519/87, s. 2 (1), *part*.

. . . . .

(2*a*) A single certificate control list may be filed with as many certificates of parking infraction as can be accounted for on the certificate control list. O. Reg. 519/87, s. 2 (1), *part*.

(2) Subrule 8 (3) of the said Regulation is revoked and the following substituted therefor:

(3) The clerk of the court shall endorse on the certificate control list a receipt for the certificates of offence or certificates of parking infraction filed with the certificate control list. O. Reg. 519/87, s. 2 (2).

3. The said Regulation is further amended by adding thereto the following rule:

8*a*.—(1) A certificate under subsection 19 (1a) of the Act purporting to be signed by the clerk of the municipality, or a person designated by the clerk, shall be in Form 149 and shall be affixed or appended to the certificate of parking infraction when it is filed in the office of the court.

(2) A fascimile signature of the clerk of the municipality, or a person designated by the clerk, is sufficient authentication of the certificate under subsection 19 (1a) of the Act. O. Reg. 519/87, s. 3.

4. Rule 10 of the said Regulation is revoked and the following substituted therefor:

10. The clerk of the court shall endorse the date of filing on every certificate of offence or certificate of parking infraction filed in the office of the court. O. Reg. 519/87, s. 4.

5.—(1) Subrule 11 (1) of the said Regulation is revoked and the following substituted therefor:

(1) Upon the delivery of an offence notice or a parking infraction notice with a signed not guilty plea to the office of the court specified in the notice, the clerk of the court shall set a day and time for trial. O. Reg. 519/87, s. 5 (1).

(2) Rule 11 of the said Regulation is amended by adding thereto the following subrules:

(1*a*) Where a parking infraction notice issued in respect of an alleged parking infraction under a municipal by-law is received under subsection 17 (1) of the Act, the clerk of the court shall give notice of the time and place of the trial to the defendant and the prosecutor as soon as practicable after the prosecutor has filed the certificate of parking infraction in the office of the court, together with the corresponding parking infraction notice. O. Reg. 519/87, s. 5 (2), *part*.

. . . . .

(2*a*) Where a parking infraction is alleged against the defendant as owner of a vehicle, notice of the trial shall be given to the person identified as the holder of the permit, as defined in section 6 of the *Highway Traffic Act*, in the evidence of the ownership of the

vehicle affixed or appended to the certificate of parking infraction. O. Reg. 519/87, s. 5 (2), *part*.

6. Rule 13 of the said Regulation is revoked and the following substituted therefor:

13. The following matters shall be dealt with only in court:

1. Quashing a proceeding, except under section 9 or 19 of the Act.

2. Amending an information, a certificate of offence or a certificate of parking infraction. O. Reg. 519/87, s. 6.

7. The said Regulation is further amended by adding thereto the following rule:

17*a*. Where notice is given to the clerk by the prosecutor that he does not intend to file a certificate of parking infraction that has been issued in respect of a parking infraction under an Act of the Legislature or under a regulation made under the authority of an Act, the prosecutor shall furnish the clerk with the name and address of the person to whom the parking infraction notice was issued and money paid to the office of the court in respect of the alleged parking infraction shall be refunded to that person. O. Reg. 519/87, s. 7.

8. Rule 19 of the said Regulation is amended by adding thereto the following subrule:

(1*a*) A justice who, acting under section 19 of the Act, quashes a proceeding shall endorse on the filing document to which the certificate of parking infraction is affixed or appended the decision and the reasons for the decision. O. Reg. 519/87, s. 8.

9.—(1) Subrule 28 (2) of the said Regulation is revoked and the following substituted therefor:

(2) An affidavit in support of an application under section 11 or 20 of the Act shall be in Form 102. O. Reg. 519/87, s. 9 (1).

(2) Subrule 28 (3) of the said Regulation is revoked and the following substituted therefor:

(3) A certificate under section 11 or 20 of the Act shall be in Form 103. O. Reg. 519/87, s. 9 (2).

(3) Rule 28 of the said Regulation is amended by adding thereto the following subrule:

(49) A certificate under subsection 19 (1a) of the Act shall be in Form 149. O. Reg. 519/87, s. 9 (3).

10. Forms 102 and 103 of the said Regulation are revoked and the following substituted therefor:

APPENDIX 5

STATUTES

COURTS OF JUSTICE ACT, 1984

PART IV

PROVINCIAL COURTS

JUDGES

Where procedures not provided

62. Jurisdiction conferred on a provincial judge, justice of the peace or provincial court shall, in the absence of express provision for procedures therefor in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice. R.S.O. 1980, c. 398, s. 9 (2).

PROVINCIAL OFFENCES COURT

Provincial Offences Court

68.—(1) The provincial offences courts for the counties and districts are amalgamated and continued as a single court of record named the Provincial Offences Court.

Judge or justice of the peace to preside

(2) The Provincial Offences Court shall be presided over by a provincial judge or justice of the peace. R.S.O. 1980, c. 398, s. 18 (1).

Jurisdiction

R.S.O. 1980, c. 400

69. The Provincial Offences Court shall perform any function assigned to it by or under the *Provincial Offences Act* or any other Act. R.S.O. 1980, c. 398, s. 18 (2).

Sittings: young persons

70.—(1) A proceeding in the Provincial Offences Court against a young person as defined in the *Provincial Offences Act* shall be conducted in the Provincial Court (Family Division) or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as the Provincial Offences Court. 1983, c. 80, s. 2 (2).

Joint sittings

(2) Where a proceeding in which the Provincial Offences Court has jurisdiction is conducted during the course of a sitting of the Provincial Court (Criminal Division) or Provincial Court (Family Division), the proceeding shall be deemed to be conducted in the Provincial Offences Court. R.S.O. 1980, c. 398, s. 19 (2).

Contempt

71.—(1) Except as otherwise provided by an Act, every person who commits contempt in the face of the Provincial Offences Court is on conviction liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both.

Statement to offender

(2) Before proceedings are taken for contempt under subsection (1), the court shall inform the offender of the conduct complained of and the nature of the contempt and inform him or her of the right to show cause why he or she should not be punished.

Show cause

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he or she should not be punished.

Adjournment for adjudication

(4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.

Adjudication by judge

(5) Where a contempt proceeding is adjourned to another day under subsection (4), the contempt proceeding shall be heard and determined by the court presided over by a provincial judge.

Arrest for immediate adjudication

(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection (4), the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.

Barring agent in contempt

(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he or she be barred from acting as agent in the proceeding in addition to any other punishment to which he or she is liable.

Appeals

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of the *Provincial Offences Act*.

R.S.O. 1980, c. 400

Enforcement R.S.O. 1980, c. 400

(9) The *Provincial Offences Act* applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section. R.S.O. 1980, c. 398, s. 20.

Penalty for disturbance outside courtroom

72. Any person who knowingly disturbs or interferes with the proceedings of the Provincial Offences Court, without reasonable justification, while outside the courtroom is guilty of an offence and on conviction is liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1980, c. 398, s. 21.

Rules Committee

73.—(1) There shall be a Rules Committee of the Provincial Offences Court composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the Committee.

Quorum

(2) A majority of the members of the Rules Committee constitutes a quorum. *New.*

Rules

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Provincial Offences Court may make rules,

(a) regulating any matters relating to the practice and procedure of the Provincial Offences Court;

(b) prescribing forms respecting proceedings in the court;

(c) regulating the duties of the clerks and employees of the court;

(d) prescribing and regulating the procedures under any Act that confers jurisdiction on the Provincial Offences Court or a judge or justice of the peace sitting therein;

(e) prescribing any matter that is referred to in an Act as provided for by the rules of the Provincial Offences Court. R.S.O. 1980, c. 398, s. 22.

OFFICERS

Clerks

86.—(1) There shall be such clerks for the Provincial Court (Criminal Division) and the Provincial Court (Family Division) as are considered necessary, appointed under the *Public Service Act*. R.S.O. 1980, c. 418

Idem

(2) Each clerk of the Provincial Court (Criminal Division) is a clerk of the Provincial Offences Court. R.S.O. 1980, c. 398, s. 33.

Idem

(3) Each clerk of the Provincial Court (Family Division) is the clerk of that court sitting as the Provincial Offences Court. 1983, c. 80, s. 2 (4).

Highway Traffic Act

1.—(1) In this Act, Interpretation

9. "driver" means a person who drives a vehicle on a highway;

14. "highway", includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof; 1983, c. 63, s. 1 (1).

18. "Minister" means the Minister of Transportation and Communications;

25. "park" or "parking", when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;

29. "Registrar" means the Registrar of Motor Vehicles appointed under this Act;

32. "roadway" means the part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of the roadways collectively;

35. "stand" or "standing", when prohibited, means the halting of a vehicle, whether occupied or not, except for the purpose of and while actually engaged in receiving or discharging passengers;

36. "stop" or "stopping", when prohibited, means the halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a constable or other police officer or of a traffic control sign or signal; R.S.O. 1980, c. 198, s. 1 (1), pars. 24-36.

39. "vehicle" includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car; R.S.O. 1980, c. 198, s. 1 (1), par. 39; 1983, c. 63, s. 1 (4).

PART II

PERMITS

Interpretation

6.—(1) In this Part,

(a) "CAVR cab card" means a permit issued by the Ministry pursuant to the Canadian Agreement on Vehicle Registration;

(b) "holder", when used in relation to a permit, means the person in whose name the plate portion of a permit is issued;

(c) "lessee" means a person who has leased a vehicle for a period of not less than one year;

(d) "number", when used in relation to a permit or plate means a number, a series of letters or a combination of letters and numbers, and "numbered", when so used, has a corresponding meaning;

(e) "permit" means a permit issued under subsection 7 (3) consisting, except when the permit is a CAVR cab card, of a vehicle portion and a plate portion;

(f) "police officer" includes an officer appointed for carrying out the provisions of this Act;

(g) "prescribed" means prescribed by the regulations;

(h) "validate" means render in force for the prescribed period of time and "validation" and "validated" have corresponding meanings.

Person authorized by Minister

(2) Where, in this Part, it is specified that an act may be done by the Ministry, it may be done by a person authorized by the Minister to do the act. 1982, c. 15, s. 1.

Permit, etc., required

7.—(1) No person shall drive a motor vehicle on a highway unless,

(a) there exists a currently validated permit for the vehicle;

(b) there are displayed on the vehicle, in the prescribed manner, number plates issued in accordance with the regulations showing the number of the permit issued for the vehicle; and

(c) there is affixed to a number plate displayed on the vehicle, in the prescribed manner, evidence of the current validation of the permit. 1982, c. 15, s. 2 (1).

No permit validation when fines unpaid R.S.O. 1980, c. 400

(3c) Where a permit holder is in default of payment of a fine imposed for a parking infraction, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

(a) validation of that person's permit; and

(b) issuance of a new permit to that person,

may be refused until the fine is paid.

No permit issued when fines unpaid

(3d) Where a person who is not a permit holder is in default of a payment of a fine imposed for a parking infraction, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that the issuance of a permit may be refused to that person until the fine is paid.

Exception to subs. (3c)

(3e) An order permitted by subsection (3c) does not apply to preclude the holder of more than one permit from receiving validation of a permit, the plate portion of which was not associated with the vehicle involved with the infraction at the time of the infraction. 1985, c. 13, s. 1 (1).

Violations as to number lates

12.—(1) Every person who,

(a) defaces or alters any number plate, evidence of validation or permit;

(b) uses or permits the use of a defaced or altered number plate, evidence of validation or permit;

(c) without the authority of the permit holder, removes a number plate from a motor vehicle or trailer;

(d) uses or permits the use of a number plate upon a vehicle other than a number plate authorized for use on that vehicle;

(e) uses or permits the use of evidence of validation upon a number plate displayed on a motor vehicle other than evidence of validation furnished by the Ministry in respect of that motor vehicle; or

(f) uses or permits the use of a number plate or evidence of validation other than in accordance with this Act and the regulations,

is guilty of an offence and on conviction is liable to a fine of not less than $50 and not more than $500 or to imprisonment for not more than thirty days, or to both, and in addition his licence or permit may be suspended for not more than six months. R.S.O. 1980, c. 198, s. 12 (1); 1982, c. 15, s. 5 (1); 1983, c. 63, s. 5 (1).

Parking on roadway

147.—(1) No person shall park, stand or stop a vehicle on a roadway,

(a) when it is practicable to park, stand or stop the vehicle off the roadway; or

(b) when it is not practicable to park, stand or stop the vehicle off the roadway unless a clear view of the vehicle and of the roadway for at least 125 metres beyond the vehicle may be obtained from a distance of at least 125 metres from the vehicle in each direction upon the highway. R.S.O. 1980, c. 198, s. 147 (1).

Where subs. (1) does not apply

(2) Subsection (1) does not apply to that portion of a roadway within a city, town or village.

Idem

(2a) Subsection (1) does not apply to that portion of a roadway within a township, county or police village in respect of which there is a by-law prohibiting or regulating parking, standing and stopping. 1985, c. 13, s. 13.

Regulations, parking, etc.

(3) The Minister may make regulations prohibiting or regulating the parking, standing or stopping of vehicles upon a highway or any part of a highway or upon any class or classes thereof.

Effect of regulation on municipal by-law

(4) The part of every municipal by-law that is inconsistent with or has the same effect as a regulation made under subsection (3) is revoked on the day the regulation comes into force. R.S.O. 1980, c. 198, s. 147 (3, 4).

Removal of vehicle parked at prohibited place

(5) Whenever a police officer, police cadet, municipal law enforcement officer or an officer appointed for carrying out the provisions of this Act finds a vehicle on a highway in contravention of the provisions of this section or the regulations, he may move the vehicle or require the driver or operator or other person in charge of the vehicle to move it. R.S.O. 1980, c. 198, s. 147 (5); 1983, c. 63, s. 33 (1).

Disabled vehicle

(6) The provisions of this section do not apply to the driver or operator of a vehicle that is so disabled while on a highway that it is impossible to avoid temporarily a contravention of such provisions.

Precaution against vehicle being set in motion

(7) No person shall park or stand a vehicle on a highway unless he has taken such action as may be reasonably necessary in the circumstances to prevent the vehicle from moving or being set in motion.

Vehicles interfering with traffic

(10) Notwithstanding the other provisions of this section, no person shall park or stand a vehicle on a highway in such a manner as to interfere with the movement of traffic or the clearing of snow from the highway.

Application of subs. (10), where by-law in force

(11) The provisions of subsection (10) with respect to parking or standing in such a manner as to interfere with the movement of traffic or with the clearing of snow from the highway do not apply to a portion of a highway in respect of which a municipal by-law prohibiting or regulating parking or standing in such a manner as to interfere with traffic or with the clearing of snow from the highway, as the case may be, is in force.

Penalty

(12) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not less than $5 and not more than $50. R.S.O. 1980, c. 198, s. 147 (6-12).

Powers of officer to remove vehicle

(13) A police officer, police cadet, municipal law enforcement officer or an officer appointed for the carrying out of the provisions of this Act, upon discovery of any vehicle parked or standing in contravention of subsection (10) or of a municipal by-law, may cause it to be moved or taken to and placed or stored in a suitable place and all costs and charges for removing, care and storage thereof, if any, are a lien upon the vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. R.S.O. 1980, c. 198, s. 147 (13); 1983, c. 63, s. 33 (2).

R.S.O. 1980, c. 261

Vehicle owner may be convicted

181.—(1) Subject to subsection (2), the owner of a vehicle may be charged with and convicted of an offence under this Act or the regulations or any municipal by-law regulating traffic for which the driver of the vehicle is subject to be charged unless, at the time of the offence, the vehicle was in the possession of some person other than the owner without the owner's consent and on conviction the owner is liable to the penalty prescribed for the offence. R.S.O. 1980, c. 198, s. 181 (1).

When owner not liable

(2) The owner of a vehicle, except when he is also the driver, shall not be convicted for a contravention of any of the provisions of subsection 90 (3) or (6) or of sections 109 to 146, 148, 151, 152, 158 or 173 or any regulation or by-law made or passed thereunder or under subsection 90 (8) or of any of the provisions of any by-law passed under any Act regulating or prohibiting turns on a highway. R.S.O. 1980, c. 198, s. 181 (2); 1983, c. 63, s. 43 (1).

Permit holder deemed owner

(3) For the purposes of this Act, the holder of a permit as defined in section 6 shall be deemed to be the owner of the vehicle referred to in the permit if a number plate bearing a number that corresponds to the permit was displayed on the vehicle at the time an offence was committed unless the number plate was displayed thereon without his consent, the burden of proof of which shall be on the holder. 1982, c. 15, s. 12.

Exposing number plate

(4) For the purposes of this Act, where a number plate issued under section 7 is exposed on a motor vehicle, the holder of the permit corresponding thereto shall be deemed to be the owner of that vehicle unless the number plate was exposed thereon without his consent, the burden of proof of which is on the permit holder. 1983, c. 63, s. 43 (2).

Recovery

182. Every person who contravenes any provision of this Act or of the regulations is guilty of an offence and the penalties imposed by or under the authority of this Act are recoverable under the *Provincial Offences Act*. R.S.O. 1980, c. 198, s. 182.

R.S.O. 1980, c. 400

Evidence

184.— (3) A copy of any writing, paper or document filed in the Ministry pursuant to this Act, or any statement containing information from the records required to be kept under this Act, purporting to be certified by the Registrar under the seal of the Ministry, shall be received in evidence in all courts without proof of the seal or signature and is *prima facie* evidence of the facts contained therein.

Signature of Registrar

(4) An engraved, lithographed, printed or otherwise mechanically reproduced facsimile signature of the Registrar is sufficient authentication of any such copy or statement. R.S.O. 1980, c. 198, s. 184 (3, 4).

When owner may appear before justice of the peace

187.—(1) If an owner of a motor vehicle is served with a summons to appear in a local municipality other than that in which he resides for an offence against this Act, and his defence is that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official number plate, then and in that case only he may appear before a justice of the peace in the local municipality in which he resides and, in the same manner as if he were being tried for an offence against this Act, give evidence by himself and corroborated by the evidence of at least two other credible witnesses that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official number plate.

Certificate

(2) The justice, if satisfied of the truth of such evidence, shall forthwith make out a certificate in the form set out in the Schedule to this Act and forward it by registered mail to the justice before whom the summons is returnable.

Dismissal or adjournment

(3) The justice before whom the summons is returnable shall, upon receiving such certificate, thereupon dismiss the charge unless he has reason to believe that the testimony is untrue in whole or in part, in which case he may adjourn the case and again summon the defendant, who shall then be required to attend before him at the place and time mentioned in the summons. R.S.O. 1980, c. 198, s. 187.

CHAPTER 219

Interpretation Act

Application of Act

1.—(1) The provisions of this Act apply to every Act of the Legislature contained in these Revised Statutes or hereafter passed, except in so far as any such provision,

(*a*) is inconsistent with the intent or object of the Act; or

(*b*) would give to a word, expression or provision of the Act an interpretation inconsistent with the context; or

(*c*) is in the Act declared not applicable thereto.

Application of certain sections to regulations

(2) Sections 2, 4, 9, 27 and 30 apply to the regulations made under the authority of an Act. R.S.O. 1970, c. 225, s. 1.

Interpretation provisions in other Acts

2. Where an Act contains an interpretation provision, it shall be read and construed as subject to the exceptions contained in subsection 1 (1). R.S.O. 1970, c. 225, s. 2.

Application to this Act

3. The provisions of this Act apply to the construction of it and to the words and expressions used in it. R.S.O. 1970, c. 225, s. 3.

RULES OF CONSTRUCTION

Law always speaking

4. The law shall be considered as always speaking and, where a matter or thing is expressed in the present tense, it is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part of it according to its true intent and meaning. R.S.O. 1970, c. 225, s. 4.

What may be done under an Act before it is in operation

5. Where an Act is not to come into operation immediately on the passing thereof and confers power to make an appointment, to make, grant or issue an order, warrant, scheme, letters patent, rules, regulations or by-laws, to give notices, to prescribe forms, or to do any thing for the purposes of the Act, that power may be exercised at any time after the passing of the Act, but an instrument made under the power, unless the contrary is necessary for bringing the Act into operation, does not come into operation until the Act comes into operation. R.S.O. 1970, c. 225, s. 5.

Meaning of expressions used in instruments issued under an Act

6. Where an Act confers power to make, grant or issue an order, warrant, scheme, letters patent, rule, regulation or by-law, expressions used therein, unless the contrary intention appears, have the same meaning as in the Act conferring the power. R.S.O. 1970, c. 225, s. 6.

Judicial notice

7.—(1) Every Act shall be judicially noticed by judges, justices of the peace and others without being specially pleaded.

Idem

(2) Every proclamation shall be judicially noticed by judges, justices of the peace and others without being specially pleaded. R.S.O. 1970, c. 225, s. 7.

Effect of preamble

8. The preamble of an Act shall be deemed a part thereof and is intended to assist in explaining the purport and object of the Act. R.S.O. 1970, c. 225, s. 8.

Marginal notes, headings, etc., not part of Act

9. The marginal notes and headings in the body of an Act and references to former enactments form no part of the Act but shall be deemed to be inserted for convenience of reference only. R.S.O. 1970, c. 225, s. 9.

All Acts remedial

10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of any thing that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit. R.S.O. 1970, c. 225, s. 10.

IMPLIED PROVISIONS

Implied provisions.

27. In every Act, unless the contrary intention appears,

deviation from forms

(*d*) where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead do not vitiate it;

CHAPTER 301

Motorized Snow Vehicles Act

Interpretation

1. In this Act,

(*f*) "motorized snow vehicle" means a self-propelled vehicle designed to be driven primarily on snow;

(*g*) "permit" means a permit issued under section 2;

. . . . .

(*i*) "registration number" means a number or combination of letters and numbers allocated to a motorized snow vehicle by the Ministry on the registration thereof;

(*l*) "validate" means render in force for the period of time prescribed by the regulations, and "validation" and "validated" have corresponding meanings. R.S.O. 1980, c. 301, s. 1; 1981, c. 42, s. 1; 1982, c. 13, s. 1.

Permit required

2.—(1) The owner of a motorized snow vehicle shall not,

(*a*) drive the motorized snow vehicle; or

(*b*) cause or permit the motorized snow vehicle to be driven,

except under the authority of a permit for the motorized snow vehicle issued or validated under subsection (3) or except on lands occupied by the owner of the motorized snow vehicle.

Dealer shall register

(2) Every dealer in motorized snow vehicles who sells a new motorized snow vehicle shall register the motorized snow vehicle on behalf of the purchaser thereof with the Ministry within six days following the sale.

Issuance of permits

(3) Upon registration of a motorized snow vehicle by a dealer pursuant to subsection (2) or by the owner of the motorized snow vehicle and upon payment of the fee prescribed by the regulations, the Ministry or any person authorized by the Minister shall issue for the motorized snow vehicle a numbered permit in accordance with the regulations, bearing the registration number of the motorized snow vehicle and provide such evidence of the issue of the permit for display upon the motorized snow vehicle as may be prescribed by the regulations.

Issuance of validations of permits

(4) Upon the application of the owner of a motorized snow vehicle for which a permit has been issued and upon payment of the fee prescribed by the regulations, the Minister or any person authorized by the Minister shall validate the permit and provide such evidence of validation as may be prescribed by the regulations.

Records

(5) The Ministry shall maintain,

(*a*) a numerical index record of all permits issued and in force under this section; and

(*b*) an alphabetical index record of the names and addresses of all persons to whom permits that are in force have been issued.

(6) A permit that is issued or validated is in force during the period of time prescribed by the regulations. Term of permit

(7) Every motorized snow vehicle, unless exempted under this Act or the regulations, shall have attached to or painted on both sides of the cowling in a clearly visible position a sign showing the registration number of the motorized snow vehicle in the form and manner prescribed in the regulations. Registration number to be displayed

(8) Every driver of a motorized snow vehicle who fails to display on the motorized snow vehicle in the form and manner prescribed by the regulations evidence of the issue or validation of the permit is guilty of an offence. Display of evidence of permit

10. The provisions of the *Highway Traffic Act*, except Part XI, and of the *Motor Vehicle Accident Claims Act* do not apply to a motorized snow vehicle or to the driving thereof. R.S.O. 1980, c. 301, s. 10. Application of R.S.O. 1980, cc. 198, 298

1. In this Act, Interpretation

9. "highway" means a common and public highway, and includes a street and a bridge forming part of a highway or on, over or across which a highway passes;

18. "municipality" means a locality the inhabitants of which are incorporated;

AUTHENTICATION OF BY-LAWS

129.—(1) Every by-law shall be under the seal of the corporation, and shall be signed by the head of the council or by the presiding officer at the meeting at which the by-law was passed and by the clerk. How by-laws to be authenticated

Proof of seal or signature not required

(2) Every by-law purporting to be so sealed and signed, when produced by the clerk or any officer of the corporation charged with the custody of it, shall be received in evidence in all courts without proof of the seal or signature.

Omission to affix seal

(3) Where, by oversight, the seal of the corporation has not been affixed to a by-law, it may be affixed at any time afterwards, and, when so affixed, the by-law is as valid and effectual as if it had been originally sealed.

Certified copy of by-law

(4) A copy of a by-law, purporting to be certified by the clerk, under the seal of the corporation, as a true copy, shall be received in evidence in all courts without proof of the seal or signature. R.S.O. 1980, c. 302, s. 129.

PART XVII

POWERS TO PASS BY-LAWS

208. By-laws may be passed by the councils of all municipalities:

Prohibiting vehicles on sidewalks, etc.

42. For prohibiting carriages, wagons, bicycles, sleighs and other vehicles and conveyances of every description, and whatever the motive power, or any particular kind or class of such vehicles or conveyances being upon, or being used, drawn, hauled or propelled along or upon, any sidewalk, pathway or footpath, used by or set apart for the use of pedestrians and forming part of any highway or bridge, boulevard or other means of public communication, or being in or upon any highway, boulevard, park, park-lot, garden or other place set apart for ornament or embellishment or for public recreation. R.S.O. 1980, c. 302, s. 208, par. 42; 1982, c. 24, s. 9 (2).

210. By-laws may be passed by the councils of local municipalities:

Permit parking

118. For,

i. allowing the parking of motor vehicles or any class or classes thereof on designated parts of highways for specified periods and during specified hours pursuant to permits issued,

ii. charging such fee as the council may determine for the privilege of parking for such periods and during such times as the by-law provides,

iii. providing for the commencement, expiry and cancellation of permits and the refunding of the fee for the unexpired portion of the permit period,

iv. prohibiting the parking, standing or stopping of motor vehicles on the designated highways or the designated parts of highways during specified hours except by authority of a permit, and

v. providing for exemptions from parking, standing or stopping prohibitions of any by-law of the corporation regulating traffic where a permit is used.

(*a*) A by-law passed under this paragraph that affects a highway designated as a connecting link or extension of the King's Highway under subsection 21 (1) of the *Public Transportation and Highway Improvement Act* has no effect until it is approved by the Minister of Transportation and Communications. R.S.O. 1980, c. 302, s. 210, par. 118; 1982, c. 24, s. 10 (3). R.S.O. 1980, c. 421

Parking for handicapped persons

119. For exempting, pursuant to permits issued, the owners and drivers of vehicles operated by or carrying a physically handicapped person, as defined by the by-law, from any provision of a by-law passed by the council under this Act or under any other general or special Act for prohibiting or regulating the parking, standing or stopping of motor vehicles on any highway or part thereof under the jurisdiction of the council.

(*a*) A by-law passed under this paragraph,

(i) may provide for the issuing of permits in respect of vehicles that are operated by or that carry a physically handicapped person, as defined in the by-law,

(ii) may provide for the manner by which such vehicles shall be identified,

(iia) may deem, subject to such terms and conditions as are set out in the by-law, permits and other markers or devices issued by other jurisdictions for the purpose of identifying handicapped persons or vehicles used by handicapped persons to be permits issued for the purposes of by-laws passed under this paragraph and paragraph 150,

(iii) may regulate or prohibit the parking, standing or stopping of motor vehicles in respect of which a permit has been issued pursuant to a by-law passed under this paragraph and the provisions authorized by this subclause may be different from and in conflict with the provisions of any other by-law of the municipality for prohibiting or regulating the parking, standing or stopping of motor vehicles on a highway or part thereof under the jurisdiction of the council, and

(iv) shall prohibit the improper use or acquisition of a permit or any decal or other identifying marker issued in connection with the permit.

R.S.O. 1980, c. 198

(*b*) A number plate issued under the *Highway Traffic Act* that bears the symbol for the disabled shall be deemed to be a permit issued for the purposes of by-laws passed under this paragraph and paragraph 150. R.S.O. 1980, c. 302, s. 210, par. 119; 1983, c. 41, s. 1 (1, 2).

Prohibiting parking on private or municipal property

125. For prohibiting the parking or leaving of motor vehicles,

i. on private property without the consent of the owner or occupant of the property, and

ii. on property owned or occupied by the municipality or any local board thereof without the consent of the municipality or local board, as the case may be.

(*a*) A by-law passed under this paragraph may provide for the removal or impounding of any vehicle, at its owner's expense, parked or left contrary to the by-law.

(*b*) Subsection 147 (13) of the *Highway Traffic Act* applies with necessary modifications to a by-law passed under this paragraph. R.S.O. 1980, c. 198

(*c*) The driver of a motor vehicle, not being the owner, is liable to any penalty provided under a by-law passed under this paragraph, and the owner of a motor vehicle is also liable to such a penalty unless at the time the offence was committed the motor vehicle was in the possession of a person other than the owner without the owner's consent.

(*d*) Notwithstanding subsection 321*a* (2) and subject to clause (*f*), the driver or owner of a motor vehicle parked or left on private property is not liable to any penalty or to have the motor vehicle removed from such property or impounded under a by-law passed under this paragraph except upon the written complaint of the owner or occupant of the property given to a constable or officer appointed for the carrying out of the provisions of the by-law.

(*e*) Where an owner or occupant of property affected by a by-law passed under this paragraph has posted signs stating conditions on which a motor vehicle may be parked or left on the property or prohibiting the parking or leaving of a motor vehicle on the property, a motor vehicle parked or left on the property contrary to such conditions or prohibition shall be deemed to have been parked or left without consent.

(*f*) A special constable appointed under the *Police Act*, in respect of a particular property, to enforce a by-law passed under this paragraph shall be deemed to have the written authority of the owner or occupant of the property to enforce the by-law, and such special constable is not required to receive a written complaint before enforcing the by-law. R.S.O. 1980, c. 381

(*g*) In this paragraph,

(i) "owner" when used in relation to property means,

(A) the registered owner of the property,

(B) the registered owner of a condominium unit, whose consent shall extend only to the control of the unit of which he is owner and any parking spaces allotted to him by the condominium corporation or reserved for his exclusive use in the declaration or description of the property,

(C) the spouse of a person described in sub-subclause (A) or (B),

(D) where the property is included in a description registered under the *Condominium Act*, the board of directors of the condominium corporation, R.S.O. 1980, c. 84

(E) a person authorized in writing by the property owner as defined in sub-subclause (A), (B), (C) or (D) to act on the owner's behalf for requesting the enforcement of a by-law passed under this paragraph,

(ii) "occupant" means,

(A) the tenant of the property or part thereof whose consent shall extend only to the control of the land of which he is tenant and any parking spaces allotted to him under his lease or tenancy agreement,

(B) the spouse of a tenant,

(C) a person or a municipality, or a local board thereof, having an interest in the property under an easement or right of way granted to or expropriated by the person, municipality or local board whose consent shall extend only to the part of the property that is subject to the easement or right of way.

(D) a person authorized in writing by an occupant as defined in sub-subclause (A), (B) or (C) to act on the occupant's behalf for requesting the enforcement of a by-law passed under this paragraph. R.S.O. 1980, c. 302, s. 210, par. 125; 1982, c. 24, s. 10 (4, 5).

310. By-laws may be passed by the council of every local municipality:

Use of untravelled portions of highways under lease

2. For regulating and controlling the use, including the use for parking purposes, of untravelled portions of highways under the jurisdiction of the council that are not extensions or connecting links of the King's Highway, which are leased or in respect of which a licence is granted under paragraph 1. R.S.O. 1980, c. 302, s. 310.

Installation of meters for controlling parking of vehicles on highways, and charging of fees for parking

8. For erecting, maintaining and operating on any highway or portion of a highway automatic or other mechanical meters or devices, with the necessary standards for the same, for the purpose of controlling and regulating the parking of any vehicle on the highway and measuring and recording the duration of such parking, for requiring drivers of every vehicle parked on such highways to make use of such meters or devices, and to pay for parking such vehicle on the highway a fee according to the amount or scale prescribed by the by-law and as measured by the meter or device, and for prohibiting parking of vehicles on such highway or portion of a highway unless such meter or device is made use of and such fee is paid, and for limiting the right of parking of vehicles on such highway to such drivers as do make use of such meters or devices and pay such fees.

(*a*) No municipality or municipal parking authority, except in case of negligence, is liable for personal injury or for damage by reason of the erection, maintenance or operation of such meters or devices with the necessary standards for the same under the authority of a by-law passed under this paragraph, or by reason of a vehicle being parked on the highway under the terms of such by-law. R.S.O. 1980, c. 302, s. 315, par. 8; 1982, c. 24, s. 12 (1). No action except for negligence

PART XIX

Penalties and Enforcement of By-laws

Power to impose fines

321. By-laws may be passed by the councils of all municipalities and by the boards of commissioners of police for providing that any person who contravenes any by-law of the council or of the board, as the case may be, passed under the authority of this Act, is guilty of an offence and for providing for the imposition of fines of not more than $2,000 on every person who is convicted of an offence under any such by-law. 1982, c. 24, s. 13, *part*.

Illegally parked vehicles, owner's liability

321*a*.—(1) A by-law passed for the purposes of section 321 may provide that, where a vehicle has been left parked, stopped or left standing in contravention of a by-law passed under this Act, the owner of the vehicle, notwithstanding that he was not the driver of the vehicle at the time of the contravention of the by-law, is guilty of an offence and is liable to the fine prescribed for the offence unless, at the time of the offence, the vehicle was in the possession of some person other than the owner without the owner's consent.

Payment out of court

(2) A by-law passed for the purposes of section 321 may provide a procedure for the voluntary payment of penalties out of court in cases where it is alleged that a by-law related to the parking, standing or stopping of vehicles has been contravened. 1982, c. 24, s. 13, *part*.

Application of fines

323. Except as otherwise provided in any Act, every fine imposed for a contravention of a by-law of a municipality or a local board thereof belongs to the municipality. R.S.O. 1980, c. 302, s. 323.

Convictions not invalidated for want of proof of by-law

324.—(1) A conviction for a contravention of any by-law shall not be quashed for want of proof of the by-law before the convicting justice, but the court or a judge hearing the motion to quash may dispense with such proof or may permit the by-law to be proved by affidavit or in such other manner as may be considered proper.

Requirement as to proof

(2) Nothing in this section relieves a prosecutor from the duty of proving the by-law or entitles the justice to dispense with such proof. R.S.O. 1980, c. 302, s. 324.

Power to restrain by order when conviction entered

326. Where any by-law of a municipality or of a local board thereof, passed under the authority of this or any other general or special Act, is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted. R.S.O. 1980, c. 302, s. 326.

Prosecutions

Application of s. 321

349. Section 321 applies with necessary modifications to by-laws passed under subsection 347 (1) by the trustees of a police village. R.S.O. 1980, c. 302, s. 349.

Off-Road Vehicles Act, 1983

Interpretation

1. In this Act,

(c) "holder", when used in relation to a permit, means the person in whose name the plate portion of a permit is issued;

(g) "off-road vehicle" means a vehicle propelled or driven otherwise than by muscular power or wind and designed to travel,

(i) on not more than three wheels, or

(ii) on more than three wheels and being of a prescribed class of vehicle;

(i) "permit", unless otherwise indicated, means a permit issued under section 5 consisting of a vehicle portion and a plate portion;

Permit required

3.—(1) No person shall drive an off-road vehicle except under the authority of a permit for the vehicle and with the number plate showing the number of the permit displayed on the vehicle in the manner prescribed.

Permit to be carried

(2) Every driver of an off-road vehicle shall carry the permit for it or a true copy thereof and shall surrender the permit or copy for inspection upon demand of a peace officer.

Exception

(3) Subsection (2) does not apply to a driver of an off-road vehicle on land where the owner of the vehicle is the occupier of the land. 1983, c. 53, s. 3.

Application where permit under R.S.O. 1980, 198

7. Section 3 does not apply if the owner of the vehicle holds a permit for the vehicle issued under section 7 of the *Highway Traffic Act*, the number plate issued thereunder is displayed on the vehicle in accordance with the regulations under that Act and the permit is of such a nature that, were the vehicle driven on a highway, there would be no contravention of the *Highway Traffic Act* with respect to the permit and number plate. 1983, c. 53, s. 7.

Violations as to number

9.—(1) Every person who,

(a) defaces or alters any number plate furnished by the Ministry;

(b) uses or permits the use of a defaced or altered number plate;

(c) without the authority of the permit holder removes a number plate from an off-road vehicle; or

(d) uses or permits the use of any number plate upon an off-road vehicle other than a number plate authorized for use on that off-road vehicle,

is guilty of an offence and on conviction is liable to a fine of not less than $50 and not more than $500 or to imprisonment for not more than thirty days, or to both.

Property of the Crown

(2) Every number plate furnished by the Ministry under this Act is the property of the Crown and shall be returned to the Ministry when required by the Ministry. 1983, c. 53, s. 9.

No other number to be exposed and number to be kept clean

10.—(1) The driver of an off-road vehicle shall ensure that,

(a) no number other than that upon the number plate furnished under this Act shall be exposed on any part of an off-road vehicle in such a position or manner as to confuse the identity of the number plate; and

(b) the number is kept free from dirt and obstruction and is so affixed that the numbers thereon are plainly visible at all times and the view thereof is not obscured by any part of the vehicle or any attachments thereto, or by the load carried.

Penalty

(2) Every person who contravenes clause (1) (b) is guilty of an offence and on conviction is liable to a fine of not less than $5 and not more than $10. 1983, c. 53, s. 10.

Evidence

22.—(1) A copy of any paper filed in the Ministry under this Act or the regulations, or any statement containing information from the records required to be kept under this Act or the regulations, purporting to be certified by the Registrar under the seal of the Ministry, shall be received in evidence in all courts without proof of the seal or signature and is *prima facie* evidence of the facts contained therein.

Signature of Registrar

(2) An engraved, lithographed, printed or otherwise mechanically reproduced facsimile signature of the Registrar is sufficient authentication of any such copy or statement. 1983, c. 53, s. 22.

APPENDIX 6

COSTS

PROVINCIAL OFFENCES ACT

O. Reg. 508/87.
Costs.
Made—September 1st, 1987.
Filed—September 1st, 1987.

REGULATION TO AMEND REGULATION 815 OF REVISED REGULATIONS OF ONTARIO, 1980 MADE UNDER THE PROVINCIAL OFFENCES ACT

1. Section 1 of Regulation 815 of Revised Regulations of Ontario, 1980, as remade by section 1 of Ontario Regulation 614/85, is amended by adding thereto the following paragraphs:

4. For service of a parking infraction notice issued other than under a municipal by-law $3.75

5. Upon conviction under section 19 of the Act 2.50

2. This Regulation comes into force on the day Part II of the *Provincial Offences Act* is proclaimed in force.